

PART 1
CONDITIONS OF TENDER

Request for Tender (RFT)	<i>Hire of Plant & Equipment (Wet & Dry)</i>
Closing Time:	16 August 2021 at 2pm(AEST)
RFT / Contract Number:	WSCT- 2122-01-VP



Table of Contents

1.	DEFINITIONS.....	3
2.	STRUCTURE OF THIS REQUEST FOR TENDER (RFT)	4
3.	HOW TO RESPOND TO THIS TENDER.....	5
4.	OBTAINING INFORMATION	5
5.	RESPONSIBILITIES OF TENDERER.....	6
6.	CLARIFICATION REQUESTED BY TENDERERS	8
7.	CONFORMING AND NON-CONFORMING TENDERS.....	8
8.	LODGEMENT OF TENDERS	9
9.	OPENING OF TENDERS	10
10.	TENDER EVALUATION PROCESS.....	10
11.	ADDENDUMS	14
12.	COMMISSIONS AND INCENTIVES.....	14
13.	CONFIDENTIALITY	14
14.	ACCEPTANCE OF TENDER.....	15
15.	NO LEGAL REQUIREMENT	16
16.	RIGHT TO INFORMATION AND DISCLOSURE	16
17.	OWNERSHIP OF TENDERS.....	17
18.	INFORMATION PRIVACY	17
19.	CONFLICT OF INTEREST	18
20.	MISCELLANEOUS	18



1. DEFINITIONS

1.1 In these Conditions of Tender the following terms shall, unless inconsistent with the context, have the meanings as indicated:

'Authorised person' means the representatives of the Principal

A reference to a **clause** is a reference to a clause of this RFT.

'Closing Time' means **2pm, 16 August 2019** (AEST) Australian Eastern Standard Time

'Conditions of Tender' means these Conditions of Tender.

'Confidential Information' means any technical, commercial or other information, ideas, concepts, know-how, data, drawings, specifications or designs of any kind:

(a) Owned by the Principal and provided or made available by the Principal to the Tenderer; or

(b) Created by the Tenderer, from the material provided or made available to the Tenderer by the Principal for the purposes of submitting the Tender.

'Conforming Tender' means a Tender described in clause 7.1.

'Contact Person' means the same as Authorised Person.

'Contract' has the meaning given in the General Conditions for Contract.

'Contract for Goods or Services' means the contract for the hire of the plant or equipment as referred to in clause 14.2 of these Conditions of Tender and attached in Part 5 of the tender documents.

'Contract Price' has the meaning given in the General Conditions for Contract.

'Contractor' means the successful Tenderer as described in clause 14.2.

'General Conditions of Contract' means the General Conditions for Contract comprising Part 5 of the RFT.

'GST' has the meaning given in the General Conditions for Contract.

'Letter of Acceptance' has the meaning given in the General Conditions for Contract.

'Local Government' - means a local government (including a joint local government) constituted under the *Local Government Act 2009 (Qld)*.

'Non-Conforming Tender' means a Tender does not meet the requirements set out in this RFT and/or the Tender Documents.

'Personal Information' has the meaning given in the *Information Privacy Act 2009*.

'Principal' or **'WSC'** or **'Council'** means **Winton Shire Council**.

'Relevant Person' means the Tenderer and each person engaged in the preparation of a Tender on behalf of the Tenderer.

'Request for Tender' or **'RFT'** see clause 2.1.

'RTI Act' means the *Right to Information Act 2009*.

'Services' means the services sought to be purchased by the Council pursuant to this RFT.

'Service Categories' means that listed in the Specification and attached in Part 2 of the tender documents.

'Site' means the place or location the work is to be undertaken.

'Special Conditions of Contract' means those set out in Appendix A and B of the Specification (Part 2).

'Specification' means the Specification comprising Part 2 of the RFT documents, including any amendment or addition to the Specification.

'Tender' means a tender submitted by a Tenderer pursuant to this RFT.

'Tender Documents' means the documents specified in clause 2.1.



Conditions of Tender

'Tender Process' means the process for calling, receiving, evaluating and awarding of Tender(s) as proposed in these Conditions of Tender.

'Tender Response' means the Tender Response comprising of the response to selection criteria questions, the mandatory insurance documents, the schedule documents in Part 3 and Part 4 of the RFT, including any templates or attachments to be completed and included in a Tender.

'Tender Response Schedules' or 'Tender Response Documents' are the forms referred to in clause 2.1 and attached in Part 3 and Part 4 of the tender documents.

'Tenderer' means any person lodging a Tender.

'Tenderer's Representative' means the person nominated by a Tenderer.

'Vendor Panel' means the online tender and evaluation system to be used for the issuing and electronic submission of tenders, addenda and RFQs.

'Work' or 'Works' means the project, job, tasks or duties to be undertaken by the Contractor.

2. STRUCTURE OF THIS REQUEST FOR TENDER (RFT)

2.1 The documents comprising this Request for Tender (RFT) are, collectively:

- (a) Part 1 – Conditions of Tender
- (b) Part 2 – Specifications
- (c) Part 3 – Schedules (excluding Pricing) for Tender (must complete, sign where required, and return these documents using the online Vendor Panel system). When completed by the Tenderer, these documents (along with the responses submitted via the online Vendor Panel system, and the Pricing Schedule) comprises the Tender submission of the Tenderer. These include the following documents:
 - (i) Schedule 1 – Tender Form – Formal Offer
 - (ii) Schedule 2 – Tenderer's Details
 - (iii) Schedule 3 – Financial Capacity
 - (iv) Schedule 4 – Licences, Qualifications and Accreditation
 - (v) Schedule 5 – Insurance
 - (vi) Schedule 6 – Work Health & Safety and Risk Management
 - (vii) Schedule 7 – Range of Plant & Equipment
 - (viii) Schedule 8 – Environmental Systems
 - (ix) Schedule 9 – Industrial Relations Record
 - (x) Schedule 10 – Conflict of Interest
 - (xi) Schedule 11 – Referees
 - (xii) Schedule 12 – Statement of Departures
 - (xiii) Schedule 13 – Organisation Resources
 - (xiv) Schedule 14 – Experience/Past Performance
- (d) Part 4 – Pricing Schedule
- (e) Part 5 – General Conditions of Contract (read and keep this part)

2.2 All parts of the RFT must be read and construed together so that all parts are as far as possible consistent. Where documents are inconsistent, the documents should be read and construed in the order of priority from document (a) to (e) as follows:

- (a) Conditions of Tender
- (b) Special Conditions of Contract



Conditions of Tender

- (c) Specification
- (d) General Conditions of Contract
- (e) Tender Response

- 2.3 The Request for Tender (RFT) is not an offer. The RFT is an invitation for persons to submit an offer for the Hire of Plant & Equipment (Wet and/or Dry) for the execution and completion of Work particularised in the Specification.
- 2.4 All relevant tender documents and associated response schedules are available through the online Vendor Panel system (www.vendorpanel.com.au). All Tender responses must be submitted electronically via the online Vendor Panel system.

3. HOW TO RESPOND TO THIS TENDER

- 3.1 Tenderers are required to download and read all documents comprising this RFT from the online Vendor Panel system.
- 3.2 Tenderers are required to complete all Schedules in Part 3 and Part 4 (Tender Response Documents) and respond to all questions in the online Vendor Panel system.
- 3.3 The completed Tender Response Documents, responses to questions and attachment of mandatory documents (certificates of insurance) will collectively form the Tenderer's Tender.
- 3.4 Tenderers can also supply any other additional information or documents relevant to the tender. The Principal may have reference to such additional information or documents in evaluating the Tenders.
- 3.5 Tenderers must lodge their Tender through the online Vendor Panel system.
- 3.6 It is highly desirable that responses to individual questions are kept to 750 words or less; however, if further information is required, a clear reference to an appendix or attachment must be noted.
- 3.7 Tenderers should be specific in answering the questions within the online Vendor Panel system rather than referring to generic company information and attachments.
- 3.8 Should a Tenderer fail to complete any of the Tender Response Documents (refer to Clause 2.1 above) the Principal may deem the Tender Offer to be non-compliant.
- 3.9 All documentation and communications will be in the English Language.

4. OBTAINING INFORMATION

- 4.1 The Principal will provide the Tenderer with the RFT through the online Vendor Panel system. No fee is payable for the supply of the RFT.
- 4.2 The Principal will provide information to Tenderers in electronic format only.



Conditions of Tender

- 4.3 Any enquiries or requests for information regarding this RFT or the Tender Documents must be submitted through the online messaging function in the Vendor Panel system. The Principal is not under any obligation to respond to questions raised within, three (3) days of the Closing Date.
- 4.4 The Principal may (but is not obligated to) respond to a Tenderer's enquiries or requests for information. If the Principal provides any information to a Tenderer, then the Principal reserves the right to provide that information to other Tenderers.
- 4.5 Tenderers must not direct requests for information to, or seek to discuss the RFT process with, any Councillor or officer of the Principal other than through the online messaging function in the Vendor Panel system.
- 4.6 No statement, advice or information provided by any representative of the Principal should be construed as modifying this RFT or any of the Tender Documents, unless confirmed in writing by the issuing of an Addendum through the online Vendor Panel system.
- 4.7 Information provided to the Tenderer by or on behalf of the Principal:
- (a) will be provided for the convenience of the Tenderer only, and, unless expressly incorporated into the Contract, will not form part of the Contract; and
 - (b) is not warranted or represented by the Principal as accurate, correct or adequate.
- 4.8 If requested by the Principal, the Tenderer must:
- (a) provide further information relating to the Tender; and
 - (b) give a presentation at a time and place nominated by the Principal:
 - (i) to demonstrate the Tenderer's financial substance, technical capabilities and resources; and
 - (ii) to demonstrate its ability to comply with the terms and conditions of the Contract; and
 - (iii) in relation to anything else relative to the Tender; and
 - (c) allow the Principal and its agents to inspect any facility, plant or equipment the Tenderer proposes to use in complying with the terms and conditions of the Contract; and
 - (d) authorize the Principal and its agents (in writing, if required) to contact any referee nominated by the Tenderer; and
 - (e) authorize the Principal (in writing, if required) to obtain information about the Tenderer, particularly information relevant to the Tenderer's ability to discharge the responsibilities of the Contractor under the Contract, from any third party the Principal considers may be able to provide that information.

5. RESPONSIBILITIES OF TENDERER

- 5.1 Before submitting its Tender, each Tenderer must:
- (a) carefully read and consider the RFT, the General Conditions of Contract and any other information made available by the Principal with respect to the RFT and the process of tendering for the Contract; and



Conditions of Tender

- (b) read and consider all information relevant to any risks, contingencies and other circumstances that may be relevant to the RFT; and
 - (c) inform itself of the nature of the obligations it must discharge under the Contract; and
 - (d) inform itself of the labour, plant and equipment, resources or any other items necessary, suitable or desirable, that may be required to enable the Tenderer to discharge its obligations under the Contract; and
 - (e) ensure they are licensed or registered to perform the Services/Work required (if applicable).
 - (f) not rely upon information provided by or on behalf of the Principal; and
 - (g) independently verify any information provided by or on behalf of the Principal, and satisfy itself that the information is adequate and accurate; and
 - (h) satisfy itself that the information in its Tender is accurate and complete; and
 - (i) satisfy itself that its Tender complies in all respects with the requirements of the Conditions of Tender;
 - (j) independently examine the Site and the sub-surface conditions of the Site prior to undertaking any Work.
- 5.2 In evaluating Tenders and determining with whom it will enter the Contract, the Principal will rely upon Tenderers having complied with the requirements of clause 5.1.
- 5.3 Failure to comply with any requirement in clause 5.1 will not relieve the relevant Tenderer of responsibility to complete the Contract in accordance with its terms and, in particular, the price or rate tendered by the Tenderer.
- 5.4 The Principal will not be responsible for the payment of any expenses or losses incurred by the Tenderer in:
- (a) attending any briefing or site inspection; or
 - (b) preparing and lodging its Tender; or
 - (c) participating in any post Tender activities.
- 5.5 A Tender will not be considered if the Tenderer or anybody on its behalf offers or gives anything to:
- (a) any Councillor of the Principal; or
 - (b) any officer or agent of the Principal,
- as an inducement or reward that could influence the actions of the person in relation to the Tender.
- 5.6 The Tenderer must not collude with any other Tenderers or potential Tenderers.
- 5.7 Any issues or concerns that a Tenderer or prospective Tenderer has with the probity of the RFT process must be submitted to the Principal via the online messaging function in the Vendor Panel system.
- 5.8 Tenderers must not use this RFT or the RFT documents (including any attached technical and other written information supplied by the Principal) 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 Principal) and providing a copy to any third party not involved in the preparation of the Tender.



6. CLARIFICATION REQUESTED BY TENDERERS

- 6.1 A prospective Tenderer may submit a written request for clarification on any part of the tender documents prior to lodgement of their Tender, using the online messaging function in the Vendor Panel system.
- 6.2 Where a prospective Tenderer submits a written request for clarification pursuant to clause 6.1 above which the Principal deems is likely to be of interest to all prospective Tenderers, the Principal will distribute both the question and answer to all other prospective tenderers who have downloaded a copy of the RFT via the online messaging function in the Vendor Panel system.
- 6.3 The Principal will not be bound by any verbal advice given or information provided by any Councillor, officer or representative of the Principal.
- 6.4 Where the Principal's response to the Request for Clarification alters the meaning or interpretation of the Tender, such a response shall be recorded and distributed to all parties who have properly and duly obtained official tender documents. The Principal shall not disclose the identity of the Tenderer who originally requested the information to any of the other Tenderers.
- 6.5 It is a Tenderer's responsibility to ensure that their contact details in the Vendor Panel system remain current and effective as a means of communication during the entire RFT process. Messages sent to Tenderers' email addresses as listed in Vendor Panel shall be deemed to have been received and read by Tenderers.
- 6.6 Tenderers and their representatives must not interfere, or attempt to interview or to discuss its tender, or direct requests for information to, or seek to discuss the RFT process with any elected member or officer of the Principal. All such requests must be lodged through the online messaging function in the Vendor Panel system. The Principal reserves the right to reject any Tender which contravenes this clause 6.6.
- 6.7 Information provided to the Tenderer by or on behalf of the Principal:
- (a) will be provided for the convenience of the Tenderer only, and unless expressly incorporated in the Contract, will not form part of the Contract; and
 - (b) is not warranted or represented by the Principal as accurate, correct or adequate.
- 6.8 If the Principal makes information available to a Tenderer, the Principal reserves the rights to distribute the information to each Tenderer who has obtained a copy of the RFT from the Principal.

7. CONFORMING AND NON-CONFORMING TENDERS

- 7.1 A Conforming Tender is a Tender which meets all the requirements set out in this RFT and the Tender documents.



Conditions of Tender

- 7.2 Materially non-conforming Tenders will not be considered. The Principal's decision on the issue of compliance will be final.
- 7.3 A Tender may be considered as non-conforming if the Tenderer has failed to supply any of the information required by the Conditions of Tender, does not comply with any of the requirements of the Conditions of Tender or has been lodged subject to any condition or qualification.
- 7.4 The Principal will not be obliged to consider any Tender that does not comply with the requirements of the Conditions of Tender.

8. LODGEMENT OF TENDERS

- 8.1 Tenders must be lodged electronically using the online Vendor Panel system prior to 2pm on **Friday, 23 August 2019** (the Closing Time).
- 8.2 Hard copies, emails or facsimile transmissions of Tenders will not be accepted.
- 8.3 The Principal reserves the right to not consider any Tender that is not submitted in accordance with clause 8.1.
- 8.4 Tenderers will be provided at least twenty-one (21 days) for tendering, with Tenders to be lodged within the prescribed time-frame and by the method of lodgement indicated in clause 8.1.
- 8.5 The Principal may, in its absolute discretion, no less than two business days before the Closing Date, extend the Closing Date by notice to the Tenderers through the online Vendor Panel system.
- 8.6 Tenders received after the closing date and time **will not** be considered or accepted, except where clause 8.7 applies.
- 8.7 The Principal reserves the right to consider a Tender (or part of a Tender) which is not in the VendorPanel system by the Closing Time if, in the opinion of the Principal, there is satisfactory evidence (and where the Principal deem it necessary, the Principal reserves the right to require a supporting statutory declaration from a Tenderer) that:
- (a) a force majeure event outside the reasonable control of either the Principal or the Tenderer has occurred; or
 - (b) the Principal considers, in its sole discretion, that the failure was due to inadvertent human error; or
 - (c) that further consideration of such tender would benefit the Principal for any reason.
- 8.8 A Tenderer shall not alter or add to the Tender Response Documents unless required by the Conditions of Tender.
- 8.9 The Principal reserves the right to amend the Tender in any way, at any time before the Tender Closing Time, by the issue of Addenda. The Principal will issue an Addendum via the VendorPanel system.



Conditions of Tender

- 8.10 All Tenders will remain open for acceptance by the Principal for a period of not less than ninety (90) days after the Closing Date. Once submitted, a Tenderer cannot withdraw its Tender without the prior written consent of the Principal, unless the Tender is withdrawn in writing before the Closing Date.
- 8.11 The period in clause 8.10 may be extended by mutual agreement between the Tenderer and the Principal.
- 8.12 Each Tender Response constitutes an offer by the Tenderer to the Principal to provide the Services required under, and otherwise to satisfy the requirements of, the Specification on the terms and conditions of the Contract.
- 8.13 Any prices submitted in the Tender Response must be:
- (a) in Australian dollars; and
 - (b) GST inclusive.
- 8.14 The identity of the Tenderer is fundamental to the Principal. For the purposes of a Tender, the Tenderer is the person, persons, corporation or corporations:
- (a) who is named as the Tenderer in the Tender; and
 - (b) who has duly executed the Tender in a manner that binds the Tenderer.

9. OPENING OF TENDERS

- 9.1 Tenders will be opened after the Closing Time.
- 9.2 Tenders will not be opened publicly.

10. TENDER EVALUATION PROCESS

- 10.1 Tenders will be evaluated in accordance with the relevant criteria in the *Local Government Regulation 2012*, the evaluation criteria set out in the RFT and by reference to the criteria in section 104 of the *Local Government Act 2009*, namely:
- (a) value for money; and
 - (b) open and effective competition; and
 - (c) the development of competitive local business and industry; and
 - (d) environmental protection; and
 - (e) ethical behaviour and fair dealing.
- 10.2 Each Tender will be evaluated using the information provided in the Tender Response Documents and any subsequent clarifications (if relevant).
- 10.3 In assessing Tenders, the Principal will have regard to, but not necessarily be limited to, the following criteria (not listed in any order of priority):
- (a) Responses to selection criteria questions;
 - (b) Ensuring mandatory certificates of insurances have been provided, are current and that they meet the minimum limits required;
 - (c) Ensuring that all required Schedules documents have been completed and attached;



Conditions of Tender

- (d) Information provided in the Schedules documents.
- (e) Evaluation criteria

Criteria	Assessment Guidelines
1. Price (weighting – 50%)	The final price, free of qualifications shall be assessed however tenderers that include qualifications may be assessed independently
2. Regional Presence (weighting – 25%)	<p><i>(All parts of this question must be answered)</i></p> <p>Is your organisation based in the Winton Shire Council or surrounding regional areas: please answer “Yes” or “No”</p> <ul style="list-style-type: none"> • Please provide further details as to where your organisation is based and details of your regional presence. <p><i>including supporting evidence, please ensure that it is relevant to this selection criteria, and that it adds value to the statements made in your response.)</i></p>
3. Capacity to Provide Services/Deliverables Regionally (weighting – 15%)	<p><i>(All parts of this question must be answered)</i></p> <p>Has your organisation previously provided Plant & Equipment (Wet & Dry) Hire Services/Deliverables nominated in this tender to Winton Shire Council or other regional or remote Councils: please answer “Yes” or “No”</p> <ul style="list-style-type: none"> • Please provide details and examples of the services/deliverables you provided, the locations or regions delivered in, the Councils or organisations delivered to and the projects worked on. • How long have you been providing these services/deliverables? • Please identify and describe any possible barriers or limitations you may have in providing the nominated services/deliverables to Winton Shire Council. <p><i>including supporting evidence, please ensure that it is relevant to this selection criteria, and that it adds value to the statements made in your response.)</i></p>
4. Content of Schedules (Weighting – 10%)	<p><i>All Schedules (including pricing) must be completed.</i></p> <ul style="list-style-type: none"> • Please download and complete all Schedule documents. • Please ensure that all Schedules have been completed, signed (where applicable) and attached with your submission. <p>For the Pricing Schedule:</p> <ul style="list-style-type: none"> • Please enter the General (Working) and Stand Down hourly rates, and the Daily Camp rate into the spreadsheet (Note: Camp rates are on a separate tab in the spreadsheet). • Please do not alter the format of the spreadsheet. • Please save the completed document in an Excel format (not a PDF) and attach with your submission. <p><i>(Please make sure that all completed Schedules are attached with your application)</i></p>

- Evaluation criteria will be assessed and subsequently scored utilising a scoring scale of 0 to 10 (see table below)
- The weighting applied to each evaluation criteria reflects their priority.
- The final score for the evaluation will be the total of each Respondent’s weighted score.
- Scoring will not be applied to pricing, as submitted in the Pricing Schedule, other than it has been provided.



Conditions of Tender

- Where multiple Respondents have the same final score, the order of ranking will be determined by the price provided in the Pricing Schedule (with the lower price ranking higher).

In evaluating Tenders, the evaluation panel may at any time:

- Require presentations from Contractors;
- Conduct interviews with Contractor’s staff and sub-contractors;
- Contact Contractor’s referees;
- Investigate a Contractor’s structure and management, and that of any relevant subsidiary or related corporation;
- Request clarification and/or additional information from any Tenderer in writing;
- Make its own assessment of the Contractor’s ability to comply with the terms and conditions of the Contract at the tendered price;
- Investigate and/or require more information as to a Contractor’s financial position; and
- Verify that the Contractor holds all necessary insurances, approvals and certifications necessary to enable it to lawfully comply with the terms and conditions of the Contract.

Scoring Scale:

Unsatisfactory	Marginal	Adequate	Strong	Very Strong
0 – 2	3 – 4	5 – 6	7 – 8	9 – 10
No level of detail in response to criteria. Unsubstantiated capability or claims included.	Limited detail in response to criteria. Limited substantiation of capability or claims.	Appropriate level of detail and substantiation of capability and claims.	Very satisfactory and detailed responses to criteria.	Full and complete responses with detailed substantiation of capability and claims. Superior response content.

Scores and comments are recorded using the Vendor Panel system. Both the scoring and comments are used to provide the basis for feedback to Respondents. Comments must therefore be of sufficient detail, be accurate and address the shortfall as per the scoring scale. For example, a response may have a high level of alignment with the details of the required services, but not provide the degree of substantiation required. This type of commentary will also help drive supplier “follow up” so assessors are required to provide this commentary. An ‘Evaluator Guidelines’ document will be provided to evaluators to assist them in the scoring of submissions.

- 10.4 The Principal 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 for the Hire of Plant & Equipment (Wet and/or Dry).
- 10.5 If a Tender Response for a Tender is not fully completed or does not include all supporting documents and materials required by the Conditions of Tender or the Tender Response, the Tender may be rejected.
- 10.6 In evaluating Tenders, the Principal may:
- require presentations from Tenderers (if applicable);
 - conduct interviews with Tenderer’s staff and sub-contractors (if applicable);
 - contact Tenderers’ referees;



Conditions of Tender

- (d) seek clarification or additional information on any aspect of a Tenderer's Tender;
 - (e) investigate a Tenderer's structure and management, and that of any relevant subsidiary or related corporation;
 - (f) make its own assessment of the Tenderer's ability to comply with the terms and conditions of the Contract at the tendered price;
 - (g) verify that the Tenderer holds all necessary permits, licences, approvals and certifications necessary to enable it lawfully to comply with the terms and conditions of the Contract.
- 10.7 After the Closing Time, the Principal may:
- (a) invite all Tenderers to change their Tenders in response to an alteration to the Specification (pursuant to s.228(7) of the *Local Government Regulation 2012*) or any of the terms and conditions of the Contract;
 - (b) contact the Tenderer and request them to provide further information to clarify certain issues from their submissions. This information should be made available as soon as possible, and not more than twenty-four (24) hours after the request or such other time as the Principal shall allow. This allowance for extension does not apply to essential information that should be included in the Tender before the close of Tenders;
 - (c) seek advice from any other person beyond that given by the nominated referees and such advice shall remain confidential;
 - (d) negotiate with one or more Tenderers upon any aspect of their Tenders.
- 10.8 A shortlist of Tenderers may be invited to demonstrate their capabilities and answer any additional questions of the evaluation panel at no additional cost to the Principal. If presentations are required, these shall be arranged at a mutually agreeable time after written submissions have initially been reviewed.
- 10.9 Tenderers must give the members of the evaluation panel of the Principal any cooperation and assistance reasonably requested of them to facilitate consideration of their Tenders.
- 10.10 Should the requirements of any evaluation question not be met, the Principal may reject the Tender from further evaluation based on that non-compliance.
- 10.11 Where a Tenderer's response to a requirement shows that the Tenderer is unlikely to be able to meet the levels necessary to perform contracts on time and in accordance with the agreed requirements the Principal may at its sole discretion reject the Tender from further evaluation.
- 10.12 Certain criteria may be weighted by the Principal to indicate the relative degree of importance that the Principal places on specific aspects of the provision of the relevant services as detailed in the Specification. Each Tenderer must address each of the criteria in their Tender Response Documents and the Vendor Panel system. If a Tenderer fails to address any of the criteria in their Tender response, the Principal may at its discretion choose to reject the Tender.
- 10.13 The prices submitted by the Tenderer as part of its Tender shall, once accepted, be fixed and varied only according to the Contract terms.
- 10.14 The Principal reserves the right to reject Tenders where the Principal decides that the



Conditions of Tender

Tender has failed to demonstrate either:

- (a) value for money; or
- (b) that it has the technical, managerial and/or financial capability to deliver the work on time, on budget and in accordance with the requirements of the Specification and RFT documents.

10.15 Tenderers will be notified of the outcome of the evaluation process electronically in writing (by email).

10.16 Unsuccessful Tenderers may request written feedback on their application from the Principal. All requests for feedback must be in writing (by email). No further discussions or face-to-face meetings will be undertaken by the Principal. Tenderers will not be provided with information concerning other Tenderers, apart from publicly available information. No comparison with other Tenders will be made.

11. ADDENDUMS

11.1 The Principal may issue an Addendum to Tenderers through the Vendor Panel system before the Closing Time which provides:

- (a) Additional information in writing; and
- (b) Information clarifying, or correcting, information previously provided.

11.2 If the Principal issues information to Tenderers under clause 8.9 or 11.1, each Tenderer must take the information into account in the preparation of its Tender, and by submitting a Tender is deemed to have received all information issued via the Vendor Panel system relating to this RFT.

12. COMMISSIONS AND INCENTIVES

12.1 A Tender will not be considered if anybody offers or gives anything to a Councillor or any officer or agent of the Principal, as an inducement for the purpose of seeking to influence the manner in which the Tender is evaluated, or the Contract awarded.

13. CONFIDENTIALITY

13.1 The Tenderer:

- (a) acknowledges that the Confidential Information is sensitive and valuable, and will always remain the property of the Principal;
- (b) must not use the Confidential Information for any purpose other than preparing its Tender;
- (c) must not copy any material comprising or containing Confidential Information, other than where (and then only to the extent that) copying is necessary to enable it to prepare its Tender;
- (d) must allow access to the Confidential Information by Relevant Persons only to the extent necessary to enable the Tender to be prepared;
- (e) must obtain the Principal's written consent before disclosing Confidential Information to a person other than a Relevant Person.

13.2 The consent of the Principal to disclosure of the Confidential Information by the Tenderer



Conditions of Tender

may be given or withheld on such terms and conditions as the Principal considers appropriate.

- 13.3 The Tenderer's obligation under this clause 13 continues after the closure of tenders and awarding of the Contract.
- 13.4 The Principal reserves the right to retrieve from a Relevant Person any Confidential Information held by that person, subject to the Principal having given written notice to the Tenderer in writing that the Relevant Person is to be denied access to the Confidential Information.
- 13.5 Failure or delay by the Principal in enforcing strict compliance with this clause 13 or pursuing a remedy under this clause 13 will not constitute a waiver or implied variation of the entitlement or remedy.
- 13.6 This Clause will not apply to an item of Confidential Information where the Tenderer can establish that:
- (a) the item has been transferred to the public domain through no fault of the Tenderer; or
 - (b) the item was already in the Tenderer's possession when it was supplied or made available by the Principal, and not acquired directly or indirectly from the Principal; or
 - (c) it has received from the Principal written notification that the Principal no longer requires the Tenderer to keep the item confidential.
- 13.7 The Principal will treat as confidential all Tenders submitted by Tenderers in connection with this RFT, subject to clause 13.8 and Governing Law.
- 13.8 The Principal 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 Principal to its advisers, officers, employees or sub-contractors solely to conduct the RFT process or to prepare and manage any resultant agreement;
 - (b) is disclosed to the Principal's internal management personnel, solely to enable effective management or auditing of the RFT process;
 - (c) is disclosed by the Principal to the responsible Minister;
 - (d) is authorised or required by law to be disclosed; or
 - (e) is in the public domain otherwise than due to a breach of the relevant obligations of confidentiality.

14. ACCEPTANCE OF TENDER

- 14.1 A successful Tenderer will be notified in writing by the Principal of the Principal's acceptance of its Tender by way of a Letter of Acceptance (to be sent electronically).
- 14.2 Once the letter of acceptance is signed and returned to the Principal, this creates an obligation on the Principal and the successful Tenderer to enter into the Contract for Services (as provided in the RFT documents). The successful Tenderer will then become a "Contractor" and will be added to the Register of Pre-Qualified Suppliers (RPQS) for the term of the contract.



Conditions of Tender

- 14.3 When the Principal wishes to engage a Contractor, it will issue a Request for Quotation (RFQ) through the online Vendor Panel system or directly to a Contractor, advising the Contract Number and the scope of services/works required. The Contractor is to respond to the RFQ in accordance with the Terms and Conditions of this contract.
- 14.4 Where a Contractor proposes to use resources from organisations other than the Contractor itself, prior approval must be sought in writing and granted by the Principal before any services/works commence. The Principal may request substantial information relating to the contractual arrangements for such resources, together with information on the relevant experience of such other organisations. This information should be disclosed when responding to any RFQ issued by the Principal.
- 14.5 By accepting an offer for Tender, the Principal is under no obligation (whether equitable or legal) to proceed either in whole or in part with the procurement of the services/works to which the tender relates.
- 14.6 The Principal does not guarantee any volume of work or that any Contractor listed on the RPQS for this contract will receive work.
- 14.7 The Contractor acknowledges and agrees that all intellectual property created by the Contractor arising out of the provision of services/works under this contract belongs to the Principal, and the Contractor will do all reasonable things necessary to assist the Principal in the protection and transfer of ownership of the intellectual property resulting from the provision of the services/works.
- 14.8 The Principal will not be bound to accept the lowest or any Tender.
- 14.9 The Principal reserves the right to accept one Tenderer, or more than one Tenderer, for the whole or part of its requirements.
- 14.10 All accepted Contractors will be required to register for Council's electronic RFQ portal before being able to receive work.
- 14.11 The Principal reserves the right to accept Tenders after the Closing Time or to refresh the Register of Pre-Qualified Suppliers (in full or in part) where the services/work offered does not meet the Principal's requirements.

15. NO LEGAL REQUIREMENT

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

16. RIGHT TO INFORMATION AND DISCLOSURE

- 16.1 The RTI Act provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including Local Governments).
- 16.2 The RTI Act requires that documents be disclosed upon request, unless the documents are exempt, or on balance, disclosure is contrary to the public interest.



Conditions of Tender

- 16.3 Information provided by the Tenderer is potentially subject to disclosure to third parties pursuant to the RTI Act.
- 16.4 If disclosure under the RTI Act, or general disclosure of information provided by the Tenderer, would be of substantial concern to the Tenderer, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, including Personal Information, this should be indicated by the Tenderer. The Principal cannot guarantee that any information provided by the Tenderer will be protected from disclosure under the RTI Act.
- 16.5 The Tenderer must familiarise itself with the relevant provisions of the RTI Act dealing with the requirements for disclosure of information by agencies, and the grounds on which access to information may be refused.
- 16.6 The Principal accepts no responsibility for the accuracy or adequacy of any information it provides to Tenderers concerning the content or effect of the RTI Act.
- 16.7 The Principal reserves the right to disclose, by publication by means of media of its choosing, upon award of any contract, details of the name and address of the Contractor, a description of the relevant goods, services, or goods and services, the commencement date of the Contract and the Contract Price or value.

17. OWNERSHIP OF TENDERS

- 17.1 Each Tender Response (including all supporting documentation and materials submitted by a Tenderer as part of, or in support of, a Tender) becomes the property of the Principal on submission and will not be returned to the Tenderer.
- 17.2 However, the Tenderer shall retain copyright and other intellectual property rights in respect of the Tender except to the extent specified in the Contract.
- 17.3 The Principal may reproduce the Tender for the purposes of evaluation.

18. INFORMATION PRIVACY

- 18.1 The Principal is bound by the provisions of the *Information Privacy Act 2009*.
- 18.2 By submitting a Tender, the Tenderer warrants that it has obtained the consent of each individual whose Personal Information is included in the Tender for:
- (a) the inclusion of their Personal Information in the Tender; and
 - (b) the use of the Personal Information by the Principal for the purpose of evaluating and awarding the Tender; and
 - (c) the disclosure of the Personal Information to other parties (including professional advisors) as may be involved in assisting the Principal with the evaluation of the Tender.
- 18.3 The Tenderer must indemnify the Principal against any claim, damage or loss (including legal costs and expenses) that the Principal may incur as a consequence of a breach by the Tenderer of the warranty in clause 18.2.



Conditions of Tender

- 18.4 Any Personal Information exchanged between the Tenderer and the Principal must be dealt with in accordance with the *Information Privacy Act 2009*.
- 18.5 The Tenderer must immediately notify the Principal upon becoming aware of any breach of this clause 18.

19. CONFLICT OF INTEREST

- 19.1 Tenderers must inform Council of any circumstances or relationships which will constitute a conflict or potential conflict of interest if the Tenderer is successful.
- 19.1 If any conflict or potential conflict exists, the Tenderer must advise how it proposes to address this.
- 19.2 If a Tenderer notifies Council of an actual or potential conflict of interest or Council becomes aware of the existence of an actual or potential conflict of interest, Council may, in its absolute discretion:
- (a) enter into discussions to seek to resolve such conflict of interest;
 - (b) cease further consideration of and disregard the Tender lodged by that Tenderer; and/or
 - (c) take any other action, as it considers appropriate.
- 19.3 Any Conflict of interest must be informed by completing the Schedule 10 document in Part 3 of the tender documents.

20 MISCELLANEOUS

- 20.1 Notwithstanding the above, nothing in these Conditions of Tender are to be taken or construed as creating the formal relationship of a legal partnership or a joint venture between the Tenderer and the Principal.
- 20.2 The RFT process is governed by and construed in accordance with the laws of the State of Queensland, and the parties submit to the jurisdiction of the Courts of that State and all Courts competent to hear appeals there from.