



REQUEST FOR TENDER CONDITIONS

1. Interpretation

Terms defined in the relevant Contract terms and conditions have the same meaning in these Request for Tender Conditions, unless inconsistent with the context.

2. Services To Be Performed

The Services are described in general terms in the Request for Tender. Tenderers should, however, ensure that they read the Request for Tender fully to ascertain the Services to be performed and the terms on which the Services are to be performed, as the contract will be evidenced solely by the relevant contract documents.

3. Tenderer To Make Enquiries

Tenderers are advised and expected to ascertain for themselves the actual extent and nature of the Services, as Council will not entertain any claim arising from a failure to do so.

4. Contact Staff

All queries concerning a tender process or Request for Tender which do not involve confidential issues must be lodged through Council's electronic tender box, as described in the Request for Tender. Only queries regarding confidential issues must be made directly to the contact person listed in the Request for Tender. No statement made by any member of Council's staff may be construed as modifying a Request for Tender unless confirmed in writing by Council.

5. Form of Contract

A copy of the relevant Australian Standard is not included in a Request for Tender. Tenderers may inspect a copy by contacting the contact person listed in the Request for Tender, but are advised to obtain their own copies.

Standard specifications or drawings of Council may be listed in the Request for Tender. The versions to be applied are those current at the closing time for tenders.

6. Form of Tenders

The Request for Tender will constitute a tender.

7. Place and Time to Lodge Tenders

Tenders must be lodged by electronic mail into Council's electronic tender box and only until the time and date stated in the Request for Tender.

8. Late Tenders

Council may consider late tenders in exceptional circumstances.

9. Council not Bound to Accept Tender

Council is not bound to accept the lowest or any tender and may determine:

- not to proceed with any of the tenders;
- to re tender the work under the contract;
- to proceed with an arrangement other than a tender process to have the work under the contract executed;
- to negotiate with a preferred tenderer; or
- not to proceed with the work under the contract.

10. Non-Conforming Tenders

Council reserves the right to accept or reject any tender that does not comply with any requirement specified in the Request for Tender or contains any qualification, condition or other indication that the tenderer is not willing to perform the contract in strict accordance with the contract documents.

11. Withdrawal of Tenders

Tenders may not be withdrawn within 60 days after the closing time for tenders without the consent of Council.

12. Changes to the Tendering Process

Council may at any time prior to the closing time for tenders, by notice in writing to tenderers, change -

- the closing time for tenders;
- the tendering procedure; or
- the scope of the contract -

outlined in the Request for Tender.

13. Tenders from Council Staff

Staff of Council may submit a tender for a contract. Where this occurs, Council will:

- disclose to all potential tenderers that an in-house bid may be submitted;
- clearly separate its role as a purchaser from that of a provider of services;
- ensure that those involved with the preparation of the in-house tender do not participate in the evaluation of tenders received; and
- apply the same conditions of tendering to the in-house tenderer as it does to an external tenderer, except for any modifications necessary to reflect the fact that the in-house team is part of Council, rather than a separate legal entity.

14. No Collateral Contract

The submission of a tender by a tenderer will not give rise to any contract governing, or in any way concerning, the tender process, or any aspect of the tender process, for the contract. Council expressly disclaims any intention to enter into any such contract.

15. Discrepancies and Inadequate Information

Council does not warrant the accuracy of the content of the Request for Tender and will not be liable for any omission from these documents.

If a tenderer -

- finds any discrepancy, error or omission in the Request for Tender;
- considers that any work necessary for the completion of the contract has not been adequately described or included in the Request for Tender; or
- has any doubt as to the meaning or completeness of any portion of the Request for Tender -

it must seek clarification in writing from the contact person listed in the Request for Tender as soon as possible.

Any clarification provided may be given in the form of an addendum to all tenderers.

16. Costs Associated with Preparing Tenders

All costs and expenses incurred by tenderers in any way associated with the development, preparation and submission of a tender, including attendance at meetings and the provision of additional information required by Council, will be borne entirely by the tenderers. No tenderer, whether successful or unsuccessful, will be entitled to make any claim against Council for such costs and expenses.

17. Required Documentation and Information

Tenders must be lodged

- in accordance with these Tender Conditions;
- using, completing and signing the Request for Tender; and
- in conformity with Council's Specification contained in the Request for Tender.

On acceptance by Council, the documents and/or information will form part of the contract.

18. Disclosure of Tender Contents and Information

Tenders will be treated as confidential by Council. Council will not disclose tender contents and information except:

- as required by law (including, for the avoidance of doubt, as required under the Freedom of Information Act 1982 (Vic) (FOI Act);
- for the purpose of investigations by the Australian Competition and Consumer Commission or other government authorities having relevant jurisdiction;
- to external consultants and advisers of Council engaged to assist with a tender process; or
- general information from tenderers required to be disclosed by Council and/or State Government policy.

19. Exemptions from Disclosure

Any request by the successful tenderer for non disclosure of contract provisions must be justified by the successful tenderer in accordance with s34(1) of the FOI Act. Under s34(1), information acquired by Council from a business, commercial or financial undertaking is exempt from disclosure if the information relates to:

- trade secrets; or
- other matters of a business, commercial or financial nature and the disclosure would be likely to expose the undertaking unreasonably to disadvantage.

However, even if certain contractual clauses are redacted by agreement between Council and the successful tenderer, this will not:

- exempt the redacted clauses from the further operation of the FOI Act; or
- constrain the Auditor General's power to secure and publish documents in accordance with the Audit Act 1994.

20. Evaluation Criteria

The tender evaluation panel will evaluate tenders in accordance with evaluation criteria listed in the Request for Tender. For this purpose, the tender evaluation panel will determine the weighting to be applied to each of the evaluation criteria.

The tender evaluation panel may determine not to fully evaluate any tender if, in the opinion of the tender evaluation panel, the tender does not adequately address or meet any of the evaluation criteria.

The tender evaluation panel may, at any stage during the tender evaluation process, elect to not further evaluate any tender if the tender evaluation panel comes to the conclusion that the tender is unlikely to be recommended as the preferred tender even if the tender was fully evaluated.

Tenderers should ensure that sufficient information is included in their tenders to facilitate proper evaluation in accordance with the stated criteria.

Reference checks may be undertaken on both internal and external sources that have not been stated as part of the tenderers submission.

21. Post-Tender Submissions

Council may require a tenderer to submit additional information concerning its tender or to personally discuss its tender before any tender is accepted.

Should a tenderer fail to -

- submit the additional information so required by; or
- attend personally to discuss its tender at -

the date and time stipulated by Council, its tender may not be further considered.

22. Rectification of Errors and Omissions

Council reserves the right to:

- check tenders for errors and omissions;
- by agreement with a tenderer, amend a tender price or rate submitted by a tenderer to remedy the effect of any errors or omissions in the calculation of the tender price or rate; and
- by agreement with a tenderer, otherwise amend the tender of the tenderer to remedy the effect of any errors or omissions.

23. Acceptance of Tender

The successful tenderer will be notified in writing of the acceptance of its tender. The notification of the acceptance of tender will create a contract between the parties on the basis of the successful tenderer's tender and the contract documents.

24. Guarantee

Tenderers are advised that Council may accept a tender on condition that a guarantee in respect of the Tenderer's obligations under the contract is executed by persons or bodies corporate specified in Council's acceptance. The successful tenderer will be required to determine if it is willing to undertake the contract on this condition within a fixed time.

25. Canvassing

Tenderers must not approach, or request any other person to approach -

- any member of Council's staff; or
- Councillor of Council

individually:

- to solicit support for their tenders; or
- otherwise seek to influence the outcome of the tender process.

The tender of any tenderer which engages in conduct prohibited in the Request for Tender may not be considered by Council.

26. Compliance with Law

Tenderers must comply with all applicable laws in preparing and lodging its tender and in taking part in the tender process. Any tenderer, if requested by Council, must submit evidence of its compliance with any relevant laws.