

## **CONDITIONS OF TENDERING**

---

### **Contents**

	Page No.
<b>1. DEFINITIONS AND INTERPRETATION</b>	<b>3</b>
1.1 Definitions	3
1.2 Interpretation	5
<b>2. REQUEST FOR TENDER</b>	<b>7</b>
2.1 Conditions of Tendering	7
2.2 The Tender Documents	7
<b>3. THE PROCUREMENT PROCESS</b>	<b>8</b>
3.1 Communications with Council	8
3.2 Nature of communications	8
3.3 Council's Rights before Tender Closing Time	9
3.4 Conduct of Tenderers	9
3.5 Complaints in Relation to the Procurement Process	10
<b>4. LODGEMENT OF TENDERS</b>	<b>11</b>
4.1 Lodgement	11
4.2 Tenderer's Warranties	12
4.3 Submission of Tender constitutes acceptance of Agreement	13
4.4 Non-Conforming Tenders	13
4.5 Intellectual Property	13
<b>5. ASSESSMENT OF TENDERS</b>	<b>14</b>
5.1 Tender Opening	14
5.2 Council's Rights After Tenders Received	14
5.3 Assessment of Tenders	14

5.4	Tender Validity Period	16
5.5	Form of Acceptance	16
5.6	Notification of Unsuccessful Tenderers	16
<b>6.</b>	<b>TENDERER’S ACKNOWLEDGMENTS</b>	<b>17</b>
6.1	Tendering Costs	17
6.2	Tenderer to Inform Itself	17
6.3	No Liability	17
<b>7.</b>	<b>CONFIDENTIALITY AND USE OF INFORMATION</b>	<b>18</b>
7.1	Confidentiality	18
7.2	Disclosure by Council	19
7.3	Media Release	19
<b>1.</b>	<b>DEFINITIONS</b>	ERROR! BOOKMARK NOT DEFINED.
<b>2.</b>	<b>NATURE OF SUPPLIER REGISTER</b>	ERROR! BOOKMARK NOT DEFINED.
<b>3.</b>	<b>SPECIFICATIONS FOR SUPPLIER REGISTERS</b>	ERROR! BOOKMARK NOT DEFINED.

## 1. DEFINITIONS AND INTERPRETATION

### Definitions

In these Conditions of Tendering:

**Agreement** is the document contained in Section E of this Request for Tender, as modified by any subsequent negotiations between Council and a Tenderer which are evidenced in writing and executed by the parties, and which have been prepared in accordance with this Request for Tender.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday in Longreach.

**Conditions of Tendering** means the conditions of tendering contained in this Section C – Conditions of Tendering of the Request for Tender;

**Conflict of Interest** includes any activity or interest of the Tenderer which may be in conflict with the Tenderer's ability to lodge a Tender in good faith and objectively. A Conflict of Interest will include a real, perceived or apprehended conflict.

**Conforming Tender** means a Tender which:

is in the form required by the Response Schedules;

complies with the Lodgement Requirements;

contains substantially all of the information and documentation required by the Tender Documents;

**Consequential Loss** means indirect loss, loss of profits, loss of revenue, loss of savings, loss of opportunity, loss of bargain, loss of use, damage to credit rating, loss of or damage to reputation, future reputation or publicity, loss in connection with claims made by third parties, remote, abnormal or unforeseeable loss and any consequential loss or damage that is similar to the other categories of loss in this definition, whether or not such loss or damage was foreseeable or within the contemplation of Council and/or the Tenderer at any time;

**Council** means Longreach Regional Council, and may, if the context requires, include a duly authorised delegate of Council;

**Evaluation Criteria** means the evaluation criteria set out in the Tender Information;

**Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

**Introduction** means Section A – Introduction of this Request for Tender;

**Law** includes all:

legislation and subordinate legislation, including local laws, rules statutory instruments, by-laws, orders, ordinances, awards and proclamations of a local government authority, the State of Queensland, the Commonwealth which are applicable to the Agreement, the Tender Documents, the Procurement Process or which are otherwise in force and includes all related fees and charges;

certificates, licenses, accreditations, clearances, authorisations, approvals, consents, permits and other requirements of authorities and other organisations having jurisdiction applicable to the Agreement, the Tender Documents or the Procurement Process and includes all related fees and charges;

**Lodgement Requirements** means the lodgement requirements noted in the Tender Information;

**Mandatory Criteria** means the mandatory criteria, if any, set out in the Tender Information;

**Non-Conforming Tender** means a Tender which is not a Conforming Tender;

**Personnel** includes the officers, employees, agents, representatives, agents, contractors and consultants of a party and any other person or entity for whom that party is vicariously liable, and, in the case of Council, includes councillors;

**Procurement Process** means the process associated with calling tenders in accordance with these Conditions of Tendering;

**Purpose for Request** means the purpose for which this Request for Tender has been made, as identified in the Tender Information;

**Request for Tender** means this request for tender (including Sections A to F) and all documents included in or incorporated by reference into it;

**Response Schedules** means the fields in Section D – Response Schedules which are to be lodged in accordance with the Tender Documents;

**Tender** means the Tender submitted by a Tenderer in response to this Request for Tender and includes all documents and information submitted with or as part of the Tender;

**Tender Box** means the tender box available via the VendorPanel portal, using the details specified in the Tender Information.

**Tender Closing Time** means the closing time detailed in the Tender Information;

**Tender Documents** means this Request for Tender, any communications to tenderers issued pursuant to these Conditions of Tendering, and all documents included in or incorporated by reference into these documents;

**Tender Information** means the information contained in Section B – Tender Information of this Request for Tender;

**Tender Validity Period** means the earlier of:

the period of time identified as such in the Tender Information, or, where a date is stated, the period ending on that date;

the date that the Tenderer is notified that their Tender has not been accepted.

If no time is stated in the Tender Information, the Tender Validity Period shall be one (1) year.

**Tenderer** means:

any person who submits a Tender; and

to the extent to which the Tender Documents can apply to any other person who obtains a copy of any of the Tender Documents during the Procurement Process, also includes such other persons;

## **Interpretation**

These Conditions of Tendering must be read in conjunction with the Introduction and the Tender Information. The Introduction and the Tender Information are not comprehensive or complete in themselves, but shall form part of these Conditions of Tendering.

Without limiting the above, in the Tender Documents:

an obligation of two or more parties binds them jointly and each of them severally and an obligation incurred in favour of two or more parties is enforceable by them severally;

words importing the singular number include the plural number and words importing the plural number include the singular number;

clause headings are for reference purposes only and must not be used in interpretation;

the words 'include', 'includes' or 'including' shall be read as if followed by 'without limitation';

where any word or phrase is given a defined meaning, any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;

where time is to be reckoned from a day or event, the day or the day of the event must be excluded and if any time period specified in the Tender Documents expires on a day which is not a business day, the period will expire at the end of the next business day;

a reference to:

a person includes any other legal entity and a reference to a legal entity includes a person;

a party includes the party's heirs, executors, successors and permitted assigns;

any gender shall be read as including every gender;

a monetary amount is a reference to an Australian currency amount;

any Law, standard, code, guideline or policy includes a reference to that Law, standard, code, guideline or policy as amended or replaced from time to time, and all related Law, standards, codes, guidelines or policies;

writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail and facsimile transmissions;

a time is to local time in Longreach;

a business day is to a day that banks are open for trading in Longreach.

the Request for Tender and Procurement Process are governed by the Law of Queensland and the Commonwealth of Australia which are in force in Queensland. Council and Tenderers submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them;

the *contra proferentem* rule and other rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it;

the rights and remedies of a party under this Request for Tender are in addition to the rights or remedies conferred on the party at law or in equity;

if a provision of this Request for Tender is void or unenforceable it must be severed from this Request for Tender and the provisions that are not void or unenforceable are unaffected by the severance; and

no waiver by a party of a provision of this Request for Tender is binding unless made in writing.

## **REQUEST FOR TENDER**

### **Conditions of Tendering**

This Request for Tender is not an offer but is a request for Tenderers to submit a Tender for the goods, services or other deliverables specified as the Purpose for Request.

The Tenderer acknowledges that upon submitting a Tender (irrespective of whether that Tender is a Conforming Tender or a Non-Conforming Tender), the Tenderer shall be bound by the terms of these Conditions of Tendering as though the Conditions of Tendering were a deed between Council and the Tenderer.

If the Tenderer breaches any of these Conditions of Tendering, Council may, at its discretion and without limiting its other rights, exclude the Tenderer's Tender(s) from assessment.

### **The Tender Documents**

The Tender Documents must be read and construed together and are intended to be mutually explanatory.

If the Tenderer:

finds any defect, deficiency, error, inconsistency, ambiguity, discrepancy or conflict in or between, or omission from any of the documents comprising the Tender Documents or any other information provided by Council; or

finds any inconsistency or conflict between the Tender Documents and any Law; or

has any doubt as to the meaning of any portion of the Tender Documents,

the Tenderer must notify Council in accordance with clause 3.1 and (if applicable) must include in its Tender a statement of the interpretation upon which it relies and on which its Tender has been prepared.

When certain work is specified or described in the Tender Documents other work that is obviously or indispensably necessary will be deemed to be included even if it is not specifically mentioned.

Council gives no warranty and makes no representation as to, and accepts no responsibility for, the accuracy, adequacy or completeness of the Tender Documents or any other information provided by or on behalf of Council.

The Tender Documents must be used solely for the purpose of tendering for the Agreement, and for no other purpose.

The Tender Documents shall at all times remain the property of Council.

## **THE PROCUREMENT PROCESS**

### **Communications with Council**

Unless otherwise agreed with Council, or expressly contemplated in these Conditions of Tender, all communications between the Tenderer and Council in relation to the Procurement Process shall be conducted via the electronic communication facilities available through the Tender Box.

Without limiting the preceding subclause, where these Conditions of Tender require the Tenderer to notify Council of something, then that notification shall be effected in accordance with the electronic communication facilities available through the Tender Box.

The Tenderer is responsible for ensuring its information technology and email system can interface with the communications facilities provided via the Tender Box, irrespective of the size or content of the communication.

### **Malfunction of Tender Box**

If the electronic communication facilities available through the Tender Box malfunction, then Council will take reasonable steps to ensure that all Tenderers are able to communicate with Council in another way for the period in which the Tender Box is malfunctioning.

Council shall act reasonably in deciding any alternative steps and, in doing so, shall do all things reasonably practicable to ensure Tenderers are dealt with equitably.

No Tenderer shall have any claim against Council for any loss or damage, howsoever arising, because of a malfunction with the Tender Box or any other issue that prevents the Tenderer from communicating with Council in accordance with this clause (whether or not such issue is the fault of Council).

### **Nature of communications**

The Tenderer must not discuss the Procurement Process or obtain any information relating to the Procurement Process from any Personnel of Council other than in accordance with the preceding clause, unless expressly contemplated in these Conditions of Tender.

Without limiting any other provision of these Conditions of Tender, Council will not be bound by, and the Tenderer may not rely upon, any oral advice or information nor any written advice or information provided other than in accordance with this clause 3.1.

Council:

may in its absolute discretion limit the time for Tenderers to make queries or requests for further information or clarifications;

is not bound to respond to any query or request for further information or clarification, whether received prior to or after the required time; and



may in its absolute discretion notify any or all Tenderers of a query or request for further information or clarification made (without identifying the submitting party) and Council's response to the query or request.

### **Council's Rights before Tender Closing Time**

Without limiting any other provision of these Conditions of Tender, Council may, at any time before the Tender Closing Time, in its absolute discretion:

- modify or depart from the procedures set out in the Tender Documents;
- extend or reduce any timeframes or dates provided for in the Tender Documents;
- amend, add to or delete any part of the Tender Documents;
- suspend, terminate or alter the Procurement Process at any time;
- request any one or more Tenderers to attend meetings.

### **Conduct of Tenderers**

The Tenderer must not, and must ensure that its Personnel do not:

- engage in misleading or deceptive conduct in relation to the Procurement Process;
- engage in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other Tenderer, or any other person in connection with the Procurement Process;
- approach or communicate, or attempt to approach or communicate, in any way with any Personnel of Council, other than in accordance with the specific provisions of these Conditions of Tender;
- attempt to improperly influence any of Council's Personnel, or violate any applicable Law regarding the offering of inducements in connection with the Procurement Process;
- accept or seek improper assistance of any of Council's Personnel, or any former Personnel of Council in preparing its Tender; or
- use any information improperly obtained, or obtained in breach of any obligation of confidentiality in preparing the Tender.

The Tenderer must:

- disclose in its Tender any Conflict of Interest arising or which is likely to arise as a result of this Procurement Process or the performance of the Tenderer's obligations under the Agreement if it is the successful Tenderer; and
- not, and must ensure that its Personnel do not, engage in any activity or obtain any interest which is likely to result in a conflict between Council and the Tenderer's interests; and

immediately notify Council of any Conflict of Interest that arises or is likely to arise and which is not disclosed in the Tender.

The Tenderer must at all times during the Procurement Process comply and ensure that its Personnel comply, with any Law applicable to the Procurement Process.

Without limiting any other right of Council, Council may exclude from assessment any Tender lodged by a Tenderer who, in Council's reasonable opinion, has engaged in any behaviour contrary to this clause in relation to the Procurement Process.

The Tenderer indemnifies Council against all costs (including legal costs), expenses, losses or damages incurred or suffered by Council in connection with a breach of subclause 3.4(a), 3.4(b) or 3.4(c). This indemnity extends to:

costs and expenses incurred by Council relating to any legal challenge to the Procurement Process including the acceptance of a Tender or anything related to the Procurement Process; and

costs and expenses incurred by Council in terminating and/or recommencing the Procurement Process.

### **Complaints in Relation to the Procurement Process**

Any complaint in relation to the Procurement Process or the Request for Tender must:

be made in writing to Council:

in accordance with clause 3.1, if the complaint is made prior to the Tender Closing Time;

otherwise in accordance with Council's Complaints Policy or equivalent policy published on Council's website, and any applicable legislation;

be made immediately upon the cause of the complaint arising or upon a Tenderer becoming aware of the complaint or its cause;

contain adequate details of:

the complaint (including the cause of the complaint, the basis upon which the complaint is made and any other relevant issues);

the effect on the complainant;

the complainant's desired outcome; and

any other relevant information,

to allow Council to properly investigate the cause of the complaint.

Council will investigate and otherwise deal with the complaint in the manner Council considers reasonably appropriate, having regard to:

the nature of the complaint, including whether Council considers the complaint to be frivolous or vexatious;

Council's Complaints Policy or equivalent Policy Council considers to be relevant in the circumstances;

any other matter that Council considers reasonably appropriate.

The complainant has no recourse against Council for any reason and in any circumstances as a result of the performance of Council's obligations or the exercise of its discretion under this clause.

## **LODGEMENT OF TENDERS**

### **Lodgement**

The Tender must comply with the Lodgement Requirements.

A Tender will be received by the Tender Closing Time if it is received in the Tender Box by the Tender Closing Time.

The Tenderer is wholly responsible for:

ensuring that its information technology system is capable of transmitting its Tender successfully to the Tender Box by the Tender Closing Time;

any failure to transmit its Tender before the Tender Closing Time, irrespective of how that failure arises.

Council recommends that Tenderers commence uploading Tenders at least three (3) hours before the Tender Closing Time, to avoid any digital processing delays in the Tender Box.

The Tenderer may at any time prior to the Tender Closing Time submit an amendment to its Tender in the same manner as its original Tender. Any amendment must clearly identify the Tender which is being amended and the amendments to be made. To the extent of any inconsistency between the Tender and the amendment, the amendments will prevail.

Any Tender or an amendment to a Tender that is not received by the Tender Closing Time may be rejected or admitted to evaluation at the discretion of Council. In exercising its discretion to reject or admit a late Tender to evaluation, Council may, without limitation, take into account the time at which the Tender is received, the reason the Tender is late and whether any other Tender has been received by the Tender Closing Time.

Council may, in its absolute discretion, elect to consider a Tender received after the Tender Closing Time if:

Council is satisfied that the Tenderer has taken all reasonable steps to lodge its Tender on time and has notified Council of the technical failure prior to, on, or as soon as practicable after the Tender Closing Time;

the Tenderer was prevented from lodging its Tender on or before the Tender Closing Time due to technical failure beyond the control of the Tenderer, and the Tenderer is able to produce evidence of that technical failure that is acceptable to Council; and

the Tenderer lodged its Tender successfully as soon as possible after the technical failure was resolved.

### **Tenderer's Warranties**

By lodging a Tender, the Tenderer warrants that:

all information contained in the Tender is accurate;

it has complied with its obligations under the Tender Documents;

it has not relied on the accuracy, adequacy or completeness of the Tender Documents, or any other information provided by or on behalf of Council in preparing its Tender;

it has not relied on the accuracy, adequacy or completeness of any other information provided by or on behalf of Council in preparing its Tender;

it has satisfied itself of the local conditions, environment and facilities that may impact upon the Tenderer's ability to perform its obligations under the Agreement;

it has examined all information relevant to the risks, contingencies and other circumstances having an effect on its Tender and the performance of its obligations under the Agreement;

it has informed itself fully as to the accuracy, adequacy and completeness of its Tender for the performance of the obligations under the Agreement and that the rates and prices included in the Tender include compliance with all obligations under the Agreement and all matters necessary for the complete performance of the Tenderer's obligations under the Agreement;

it has carried out its own investigations as to the feasibility of its Tender and has relied on those investigations.

Failure by a Tenderer to do any of the things that it has warranted will not relieve the Tenderer of its obligation to perform under the Agreement that may be entered into between the Tenderer and Council.

Council does not represent or warrant that the information provided in this Request for Tender, including any information provided by Council's Personnel or as part of the Procurement Process generally, is accurate, adequate or complete.

### **Submission of Tender constitutes acceptance of Agreement**

If the Tenderer lodges a Tender (including a Non-Conforming Tender), the Tenderer will be taken to unconditionally agree to enter into the Agreement with Council.

However, nothing in this clause limits Council's rights pursuant to clause 5.2(b).

### **Non-Conforming Tenders**

Council may, in its absolute discretion, accept or exclude a Non-Conforming Tender from assessment.

In exercising its discretion to exclude a Non-Conforming Tender, Council may, without limitation, take into account the nature and extent of the non-conformances, whether the Tenderer has also submitted a Conforming Tender and whether any Conforming Tender has been lodged by another Tenderer.

Acknowledgement by Council that it has received a Tender does not imply that the Tender has been admitted as a Conforming Tender.

### **Intellectual Property**

All Intellectual Property Rights in the Tender Documents and other documents supplied to the Tenderer by or on behalf of Council are as between Council and the Tenderer the property of Council.

The Intellectual Property Rights in any material included in the Tender and created by the Tenderer and relating specifically to the Agreement vests in Council upon acceptance by Council of a Tender (or any part thereof).

To the extent that any material submitted by a Tenderer in its Tender is the subject of pre-existing Intellectual Property Rights of third parties, the Tenderer warrants that it is able to procure for Council an irrevocable, royalty free licence to use, adapt, reproduce, publish and sublicense on the same terms all such Intellectual Property Rights and agrees to obtain such licence upon acceptance of its Tender (or any part thereof).

By submitting a Tender, the Tenderer is deemed to have granted Council a licence to reproduce the Tender in whole or in part and to do or authorise any other act or omission in relation to the Tender for the purposes of exercising its rights, or carrying out its functions or obligations under these Conditions of Tendering or the Agreement. The Tenderer shall procure all necessary consents or waivers from creators in respect of moral rights under the *Copyright Act 1968* (Cth) to allow Council to do or authorise any such acts or omissions.

The Tenderer indemnifies Council against all costs (including legal costs), expenses, losses or damages incurred or suffered by Council in connection with a claim by a third party alleging that any material submitted as, with or in relation to the Tender or any act or omission done or authorised by Council or done in accordance with these Conditions of Tendering or the Agreement in respect of such material infringes the Intellectual Property Rights of that third party.

## **ASSESSMENT OF TENDERS**

### **Tender Opening**

Tenders will not be opened publicly and Tenderers will not be permitted to attend the opening of Tenders.

### **Council's Rights After Tenders Received**

Without limiting any other specific clause in these Conditions of Tender, Council may, at any time after Tenders have been received, in its absolute discretion:

request any one or more Tenderers to change their Tender to take account of a change in the Tender Documents or any error in the Tender Documents. However, Council has no obligation to do so and need not extend the same opportunity to each Tenderer;

request a meeting with any one or more Tenderers to obtain additional information from that Tenderer;

seek to clarify and alter any aspect of a Tenderer's Tender and may, at its discretion, advise any or all of the preferred Tenderers of such clarification or alteration;

request any one or more Tenderers to provide a presentation of their Tender in person at Council's office at no cost to Council; and

request additional information from one or more Tenderers.

### **Negotiations**

Council reserves the right to negotiate amendments to any aspect of the Tender or the Tender Documents with any one or more Tenderers. Council is under no obligation to enter into negotiations with any Tenderer, nor is Council required to extend the opportunity to each Tenderer.

Council entering into negotiations pursuant to the preceding subclause does not constitute a rejection of the Tenderer's Tender or a counter offer to the Tenderer, unless specified otherwise.

Council may suspend or terminate negotiations at any time and for whatever reason.

### **Assessment of Tenders**

In determining which Tender is most advantageous to Council, each Tender admitted to assessment in accordance with these Conditions of Tendering will be assessed against the Evaluation Criteria.

In assessing Tenders, Council may

consider:

information contained in the Tender;

outcomes from discussions with Tenderer's referees (if any);

any other information available to Council;

any relevant Law, including the *Local Government Act 2009* (Qld) and any regulation enacted under it; and

other information which Council reasonably considers to be relevant to its assessment, including but not limited to any procurement policies or procedures implemented by Council;

make such other further enquiries about the Tender or the Tenderer which Council in its absolute discretion considers is or may be appropriate or relevant;

ignore any part of the Tender which is ambiguous, uncertain, unclear or illegible without seeking clarification from the Tenderer and may assess the balance of the Tender.

Council may seek any further information or assistance from any person (including third parties) where Council considers in its absolute discretion it is necessary to do so in order to properly evaluate any aspect of the Tender. Council may (but is not required to) notify the Tenderer of a third party appointed by Council to provide such assistance to Council, and, if advised, the Tenderer must cooperate with and provide all information and assistance reasonably requested by such third party. Council may exclude from assessment or reject a Tender if the Tenderer does not provide such cooperation, information and other assistance.

Council:

is not bound to accept the highest price, or any Tender, or any clarification, alteration or amendment of a Tender; and

may, subject to these Conditions of Tendering, at its discretion, reject or accept:

a late Tender;

a Non-Conforming Tender;

a Tender which fails to achieve a satisfactory score against any of the Evaluation Criteria;

a Tender which fails to demonstrate compliance with any of the Mandatory Criteria;

a Tender which has been clarified, altered or amended in accordance with these Conditions of Tendering; or

a Tender submitted by a Tenderer that has breached these Conditions of Tendering.

### **Tender Validity Period**

Each Tender must remain valid and open for acceptance by Council until the end of the Tender Validity Period.

Notwithstanding clause 5.4(a), if a Tenderer wishes to withdraw its Tender before the end of the Tender Validity Period, Council may, in its absolute discretion, and without any obligation to do so for the benefit of the Tenderer, allow the Tenderer to withdraw its Tender. Council's consent to the withdrawal of the Tender may be subject to conditions.

Council may request an extension of the Tender Validity Period at any time by giving written notice to the Tenderer. If a Tenderer does not agree to extend the Tender Validity Period as requested by Council then Council may exclude the Tenderer's Tender from assessment or further assessment as the case may be.

### **Form of Acceptance**

A Tender shall be deemed to be accepted when Council expressly advises the successful Tenderer in writing that the Tenderer's Tender (as amended by any negotiations pursuant to clause 5.2(b)) is accepted.

The Tenderer acknowledges and agrees that if their Tender is accepted pursuant to subclause (a) of this clause, then the Tenderer must take all steps reasonably required by Council to complete and sign any documents that Council requires to form part of the Agreement.

The parties acknowledge and agree that:

unless expressly authorised by Council in writing, the successful Tenderer (or any Tenderer) is not authorised to begin delivery of goods, services or other deliverables that form part of the scope of the Purpose for Request until Council has issued a Purchase Order;

if the Purpose for Request involves the appointment of the successful Tenderer to a register of pre-qualified suppliers or an approved supplier panel, or such other panel from which the successful Tenderer shall be appointed to a panel of one or more other suppliers for the delivery of goods and services, the successful Tenderer shall not be entitled to work in any particular volumes or to any particular value.

### **Notification of Unsuccessful Tenderers**

Council shall, subject to its rights under these Tender Documents, notify all unsuccessful Tenderers as soon as practicable after a Tender is accepted under clause 5.5.

Unsuccessful Tenderers may request that Council provides feedback on the Tenderer's Tender and Council's response will be at its discretion.

A Tender shall not be deemed to be rejected until Council notifies the unsuccessful Tenderer in writing that the Tender was not successful.



## **TENDERER'S ACKNOWLEDGMENTS**

### **Tendering Costs**

The Tenderer expends money, makes commitments and incurs liabilities in considering and responding to this Request for Tender ("**Tendering Costs**") at its own risk and expense.

Council shall not be liable to the Tenderer, for any reason whatsoever, to reimburse or otherwise compensate the Tenderer for any part of the Tendering Costs or for any loss associated with responding to this Request for Tender, including Consequential Loss.

### **Tenderer to Inform Itself**

The Tenderer must undertake all necessary enquiries and investigations to satisfy itself as to:

the accuracy, adequacy and completeness of the Tender Documents and any other information provided by or on behalf of Council;

all considerations, including logistical considerations, associated with discharging obligations under the Agreement; and

any other risks, contingencies and other circumstances which could have an effect on the cost of discharging obligations under the Agreement or the compliance with the Tenderer's other obligations under the Agreement in the event that the Tenderer's Tender is accepted.

If the Tenderer requires any further information or documentation from Council to enable it to comply with this clause then the Tenderer must notify Council of this in accordance with these Conditions of Tendering at least 7 days prior to the Tender Closing Time.

The Tenderer must allow, and warrants that it has allowed, in its Tender for:

all risks, contingencies and other circumstances referred to in clause 6.2(a);

carrying out all obligations required under the Agreement;

all other risks which will be borne by the Tenderer under the Agreement if its Tender is accepted.

### **No Liability**

Without limiting any other clause in these Conditions of Tendering, Council and its Personnel are not liable upon any claim for, and the Tenderer indemnifies Council against and releases Council from all liability for, any costs, expenses, losses, damages suffered or incurred by the Tenderer or any of the Tenderer's Personnel (including Consequential Loss) relating to, or arising out of or in connection with:

the preparation and submission of the Tenderer's Tender;

the exercise by Council of any of its rights under the Tender Documents; or

any defect, deficiency, error, inconsistency, ambiguity, discrepancy or conflict in or between, or omission from any of the documents comprising the Tender Documents, or any other information provided by Council, or Council's Personnel in connection with the Procurement Process.

If a court finds that Council is liable to any Tenderer with respect to the Procurement Process, the Tenderer agrees that the total aggregate liability of Council to the Tenderer for any negligence of Council or its Personnel, breach of statute by Council, breach of Contract shall be limited to \$1,000.00.

## **CONFIDENTIALITY AND USE OF INFORMATION**

### **Confidentiality**

#### **Council's confidentiality**

Subject to this clause, any information contained in the Tender Documents which is not in the public domain is to be treated by the Tenderer as confidential ('**Confidential Information**'). Confidential Information contained in the Tender Documents is only to be used for the purpose of preparing a Tender in response to the Tender Documents.

Each Tenderer:

must ensure that only appropriate Personnel have access to the Confidential Information. In all such cases, the party is to inform such Personnel of the confidential nature of the information and that it must not be disclosed;

must not and must ensure that its Personnel do not at any time disclose such Confidential Information directly or indirectly to any person whatsoever for any reason, or use or permit it to be used directly or indirectly for any reason except to the extent required by a Law; and

indemnifies Council against any costs (including legal costs), expenses, losses, damages or liability arising out of disclosure or unauthorised use of Confidential Information by the party, or its Personnel.

#### **Tenderer's confidentiality**

Subject to clause 7.2, information relating to the Tenderer's assets, operations, business dealings or financial affairs will be treated by Council as being confidential.

No other information contained in the Tender will be treated as confidential, unless:

the information is clearly identified as confidential; and

Council considers in its discretion, (acting reasonably) that the information should be treated as confidential.

Council may use material submitted as, with or in relation to a Tender (including information relating to the design, products or methodology proposed to be used by the Tenderer but not including any material which is to be treated as confidential pursuant to clauses 7.1(b)(i) or 7.1(b)(ii)) for its own purposes, including for the purpose of seeking prices from other Tenderers and for use in a contract with a party other than the Tenderer.

#### **Disclosure by Council**

Notwithstanding the preceding clause, Council may disclose any information contained in a Tender:

to comply with any Law including, without limitation under the *Local Government Regulation 2012* (Qld) and the *Right to Information Act 2009* (Qld);

to comply with any of its own policies, procedures and governance requirements; and

to such of its Personnel as is necessary to properly conduct the Procurement Process, including to evaluate and obtain approval of Tenders received.

#### **Media Release**

Tenderers must not, either on their own account or in conjunction with other parties, issue any publication, advertisement, document, article or information whether verbal or written, concerning the Purpose for Request, the Agreement or the Procurement Process in any media without the prior approval of Council.