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| REQUEST CONDITIONS FOR REQUEST FOR CONSULTANCY SERVICES |  |
|  |  |
| September 2024 |  |
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1. DEFINITIONS AND INTERPRETATION
   1. Definitions

The Definitions in the General Conditions of Contract also apply to this Request.

In this Request, unless the context otherwise requires:

**Addendum** means any addendum issued by the Principal in relation to the Request

**Applicable Policies** means the applicable part(s) of the Housing Authority and/or Government policies specified in the Request, which form part of the Request.

**Business Day** means any day except for Saturday, Sunday or a public holiday in Perth, Western Australia.

**Closing Time** means the time and date specified in the Request as the closing time for the submission of Tenders.

**Contract** means either:

(a) The head agreement between the Principal and the successful Tenderer, the terms and conditions of which are contained in the Head Agreement Documents; or

(b) The contract between the Principal and the successful Tenderer for the supply of Services by the successful Tenderer, the terms and conditions of which are contained in the Contract Documents,

As the context requires

**Electronic Lodgement Platform** means the Western Australian Government’s electronic tender lodgement platform – Tenders WA [www.tenders.wa.gov.au](http://www.tenders.wa.gov.au), or such alternative platform specified in the Request.

**Financial Information** means any information of a financial nature, including:

* + - * 1. legal structure and ownership;
        2. financial reports prepared by a qualified accountant;
        3. quarterly financial accounts for the current financial year signed by a director;
        4. up to date management accounts;
        5. current year budgets and forecasts;
        6. details of debt facilities, financial covenants and contingent liabilities;
        7. details of any current or pending legal action; and
        8. details of directors and senior management

**Principal** means the State Agency issuing the Request, as noted on the front page of the Request

**Proposed Contract Documents** has the meaning given in the Request

**Tender** means an offer submitted by the Tenderer in response to the Request.

**Tender Information** means all information, other than the Tender, submitted by the Tenderer in response to, or in connection with, the Request.

**Tender Validity Period** means the period of time specified as such in the Request, commencing from the Closing Time, as may be extended in accordance with the Request.

**Tendered Price** means the price, or the price determined by applying the formula or method, specified in the Tender.

**Tenderer** means an entity that lodges an Tender in response to this Request.

**Request** means the request issued by the Principal, which includes these Request Conditions.

**Request Conditions** means this document.

**State** means the State of Western Australia

**State Agency** has the meaning given in the *Procurement Act 2020* (WA).

* 1. Interpretation

In this Request, unless the context otherwise requires:

* + - * 1. the singular includes the plural and vice versa;
        2. a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them, but is not to be taken as implying that performance of part of an obligation constitutes performance of the whole;
        3. no rule of interpretation applies to the disadvantage of the Principal on the basis that it was responsible for prepare the Request;
        4. If the work “including” or “includes is used, the works “without limitation” are taken to immediately following;
        5. headings are included for convenience only and do not affect the interpretation of this Request;
        6. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
        7. if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
        8. if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
        9. a reference to a gender includes other genders;
        10. a reference to a person includes a State Agency, a public body, a company and an incorporated or unincorporated association or body of persons;
        11. a reference to a person includes a reference to the person’s executors, administrations, successors, substitutes (including a person taking by novation) and permitted assigns;
        12. if the Tenderer consists of a partnership or joint venture, then:

an obligation imposed on the Tenderer under the Request binds each person who comprise the Tenderer joint and severally

each person who comprises the Tenderer agrees to do all things necessary to enable the obligations imposed on the Tenderer under the Request to be undertaken; and

the act of one person who comprises the Tender binds the other person who comprise the Tenderer.

* + - * 1. an agreement, representation or warranty on the part of or in favour of two (2) or more persons binds, or is for the benefit of, them jointly and severally;
        2. a reference to the Request or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the Principal or the Tenderer;
        3. a reference to a clause, schedule, attachment or appendix is a reference to a clause, schedule, attachment or appendix to the Request;
        4. all the provisions in any schedule, attachment or appendix to the Request are incorporated in, and form part of, the Request and bind the Principal and the Tenderer;
        5. a reference to writing includes any means of representing or reproducing words in visible form including by electronic means;
        6. a reference to liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
        7. a reference to a day is to a calendar day, a month is a calendar month and a year is to a calendar year;
        8. if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;
        9. a reference to a monetary amount means that amount in Australian currency; and
        10. a reference to time means Australian Western Standard Time

1. SUBMISSION OF TENDER
   1. Complete Tender before Closing Time
2. Any Tender which:
   * + - 1. is not submitted before the Closing Time;
         2. is incomplete at the Closing Time; or
         3. is not submitted in accordance with the provisions of clause 2 in Section 1 of the Request,

will be excluded from consideration, unless the Tenderer can provide conclusive evidence of mishandling of the Request for Tender.

1. In the case of submission of the Tender by hand or by post, mishandling will only have occurred where the Tender was received by the Principal prior to the Closing Time but the Tender was not transferred by the Principal to the tender box by the Closing Time.
   1. Electronic Submission

If the Tenderer submits the Tender electronically, the Tenderer:

1. must ensure that any files uploaded are in one of the following file formats and extension or such other file format specified in the Request:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| .doc/.docx\* | .pub\* | .pdf# | .txt | .rtf | .ppt/pptx | .xls/.xlsx\* |

\* Microsoft Compatible

# Adobe Compatible

NB: Zipped Files Acceptable

1. must ensure the Tender is submitted into the correct Request number on the Electronic Lodgement Platform;
2. must comply with any specific electronic upload requirements described in the Request; and
3. agrees that:
   * + - 1. receipt of the Tender will be determined by the date and time shown on the receipt issued by the Electronic Lodgement Platform or, if no receipt is issued, the date and time which the Principal’s computer records that the Tender was received;
         2. if any file uploaded as part of the Tender contains a virus, then notwithstanding any disclaimer made by the Tenderer in respect of viruses, the Tenderer must pay the Principal all costs incurred by the Principal arising from, or in connection with, the virus;
         3. electronic lodgement of the Tender may take time and the Tenderer must make its own assessment of the time required for full transmission of its Tender;
         4. The Principal will not be responsible in any way for any loss, damage or corruption of the electronic copy of the Tender;
         5. if the Tender becomes corrupted, illegible or incomplete as a result of transmission, storage, encryption or decryption, then the Principal may request the Tenderer to provide another copy of the Tender either electronically or in hard copy or both; and
         6. if the Principal requests the provision of another copy of the Tender, then the Tenderer must;

provide the copy in the form or forms requested within the period specified by the Principal;

provide a statutory declaration that the copy is a true copy of the Tender which was electronically submitted by the Tenderer and that no changes to the Tender have been made after the initial attempted electronic submission; and

provide a copy of the Electronic Lodgement Platform receipt for the initial attempted electronic submission.

1. ABSENCE OF OBLIGATION

No legal obligation of any kind will be owed to any Tenderer as a result of the issue of this Request or the submission of any Tender.

Without limitation, no contract arises between the Principal and the Tenderer as to the process contemplated by this document and this document does not constitute an offer to undertake the Development or otherwise.

If, notwithstanding this provision, a contract is held to have come into existence as a result of this Request, the Principal’s liability in respect of that contract is limited to $1.00.

1. CANCELLATION AND VARIATION OF REQUEST
2. The Request may only be varied, supplemented, superseded or replaced by an Addendum. No statement or representation made by the Principal varies, supplements, supersedes or replaces the Request, unless the statement or representation is confirmed by an Addendum.
3. The Principal reserves the right, at any time and from time to time, to cancel, vary, supplement, supersede or replace the Request or any part of the Request, in which case:
   1. the Requesting Agency will notify potential Tenderer, or publish a notification electronically on or through the Electronic Lodgement Platform, that an Addendum has been issued or the Request has been cancelled; and
   2. the Tenderer shall not have any recourse against the Principal whatsoever including for claims for any costs or expenses incurred up to and including the date that the Request or any part of the Request is cancelled, varied supplemented, superseded or replaced.
4. Each Addendum issued shall be deemed to be incorporated in, and to form and be read as part of, the Request. The Tenderer must prepare its Tender to take into account and reflect the content of each Addendum.
5. PRINCIPAL'S RIGHTS
   1. Accepting or Rejecting Tenders
6. The Principal is not obliged to accept the Tender containing the lowest Tendered Price or any Tender.
7. If the Tenderers’ Tender makes reference to information on its website, or on any other website, the Principal will not take into account that information when evaluating a Response.
8. The Principal may, without liability, reject any Tender or all Tenders, in the requesting Principal’s absolute discretion, including if in the Requesting Agency’s opinion:
   1. (**failure to comply with Request Conditions or Request**) an Tender fails to comply with these Request Conditions or any of the requirements of the Request;
   2. (**false or misleading**) an Tender contains information or representations that are false or misleading;
   3. (**change of control**) anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Tenderer to another person, including in respect of a Tenderer which is a body corporate, if there is a change in control of the Tenderer within the meaning of the Corporations Act 2001 (Cth);
   4. (**change of consortium membership**) in respect of a Tenderer which consists of a consortium, there is a change of membership of the consortium members;
   5. (**change of policy or commercial reasons**) the Request should be cancelled for any reason, including due to changes of policy or for commercial reasons; or
   6. (**reputation**) the reputation of the Principal or the State is, or is likely to be damaged by any act or omission of the Tenderer or by the Principal or the State dealing with the Tenderer.
9. In evaluating an Tender, the Principal may take into account any information in connection with the Tender or regarding the Tenderer that the Principal has in its possession or receives from any other State Agency, the public domain, investigations or any other source, including information about the past or current performance of the Tenderer under any other contract, arrangement or dealing between the Tenderer and the State or any State Agency.
   1. Clarifying Tenders and Requesting Information
10. After the Closing Time, the Principal may request that the Tenderer provide:
    * + - 1. additional information in relation to the content of the Tender for the sole purpose of clarifying the Tender;
          2. Financial Information regarding the financial capacity of the Tenderer;
          3. additional documents or information as specified in the Request; or
          4. evidence to the satisfaction of the Principal to verify the validity of the Tenderer’s claim for any financial preference,

and the Tenderer must provide such information to the Principal within two (2) Business Days of the request to provide the information or such later time as specified by the Principal.

1. The Principal reserves the right to:
   1. conduct site visits of one or more Tenderer as it deems appropriate;
   2. hold interviews and workshops with the Tenderer to discuss any matter arising out of the Request or its Tender;
   3. request that one or more Tenderers provide additional information including samples, testing and presentations; and
   4. provide additional information to one or more Tenderers
2. The Principal has no obligation to identify matters requiring clarification.
3. Any decision to make a request for a clarification or additional information or to exercise another right under this clause 4.2 is at the sole and absolute discretion of the Principal
4. If a Tenderer is unable to provide satisfactory evidence to the Principal in accordance with clause 4.2(1)(d), that component of the Tender may be considered invalid and the preference may not be applied to the Tender.
   1. Discretion
5. Whenever the consent of the Principal is required under the Request, that consent may be given or withheld by the Principal in the Principal’s absolute discretion and may be given subject to such conditions as the Principal may determine.
6. The Principal is not obliged to give reasons for the exercise of its discretion of the imposition of any condition.
7. SHORTLISTING AND PREFERRED TENDERER
   1. Shortlisting
      * 1. The Principal may, but is not obliged to, short-list a number of Tenderers.
        2. Short-listing does not confer any rights on a Tenderer and the Request Conditions, including clause 4, continue to apply until such time as a Contract is awarded or the Request is terminated.
   2. Selection of Preferred Tenderer
      * 1. The Principal may select, but is not obliged to select, one or more Tenderers as a preferred Tenderer;
        2. Selection of a preferred Tenderer does not confer any rights on a preferred Tenderer and the Request Conditions, including clause 4, continue to apply until such time as a Contract is awarded or the Request is terminated.
        3. The Tenderer agrees that, if it is selected as a preferred Tenderer, then:
           1. its Tender will remain open for acceptance by the Principal at any time prior to the expiry of the Tender Validity Period;
           2. the Principal may choose to negotiate any aspect of the Tender; and
           3. the Principal may request the Tenderer to provide a performance guarantee, a bank guarantee or some other form of security on terms and conditions acceptable to the Principal.
        4. At any during the negotiations either the Principal or a preferred Tenderer may terminate the negotiations for any reason in which case, the Principal may, without limiting its rights under these Request Conditions:
           1. accept the Tenderer’s original Tender:
           2. select and the negotiate with any other Tenderer as a preferred Tenderer in accordance with this clause 5.2; or
           3. terminate the Request.
8. TENDERS
   1. Tenderer’s Agreement

In submitting a Tender, the Tenderer is deemed to have read and agreed to these Request Conditions and agree that:

* + - 1. (**information true and correct**) all information in its Tender and all Tender information is true and correct at the time of its submission;
      2. (**relies on own enquires**) other than in respect of information provide by the Principal to the Tenderer in writing, it relies entirely on its own enquiries in relation to all matters in respect of the Request and the Contract;
      3. (**understood Request**) it has examined and understood the Request, the Contract and any other information available to the Tenderer in respect of the Request;
      4. (**understood Addenda**) it will, prior to the Closing Time, log on to the Electronic Lodgement Platform to ensure that prior to submitting its Tender it has examined and understood each Addendum in respect of the Request. By submitting its Tender, the Tenderer will be deemed to have examined, understood and incorporated each Addendum into its Tender;
      5. (**Applicable Policies**) it has examined, understood and will comply with the Applicable Policies;
      6. (**made reasonable enquiries**) it has examined all information relevant to the risks, contingencies and other circumstances having an effect on its Tender which is obtainable by the making of reasonable enquiries, which enquiries the Tenderer has made;
      7. (**does not rely on warranties**) other than information provided by the Principal to the Tenderer in writing, it does not rely on any warranty or representation of the Principal or any person actually or ostensibly acting on behalf of the Principal;
      8. (**no reference to information on websites**) it must not make reference to any information contained on the Tenderer’s website or on any other website. All information on which the Tenderer wishes the Principal.
      9. (**no secret commission**) it has not paid or received, and will not pay or receive, any secret commission in respect of the Request;
      10. (**no collusion**) it has not colluded, and will not collude, with any other person in respect of the Request or the Tender;
      11. (**no inflation or deflation of Tendered Price**) its Tendered Price is not inflated or deflated to advantage another Tenderer;
      12. (**no anti-competitive or unethical behaviour**) it has not otherwise engaged in any anti-competitive or unethical behaviour that has the potential to advantage or disadvantage itself, any other Tenderer or the Principal;
      13. (**no unlawful arrangement**) it has not entered, and will not enter, into any unlawful arrangement with any other person in respect of the Request;
      14. (**no improper influence**) it has not sought, and will not seek, to influence any decision in respect of the Request by improper means;
      15. (**own cost and expenses**) it will pay its own costs and expenses in connection with:
          1. The preparation and submission of its Tender; and
          2. Any enquiries or consideration of further information or discussions or negotiations with, or provision of further information to, the Principal, whether before or after the submission of its Tender,

Irrespective of whether its Tender is accepted or not; and

* + - 1. (**use of Request documents**) the Request documents (and all intellectual property in the Request documents) are the property of the Principal, and the Tenderer will not:
         1. Divulge information contained in the Request documents except as necessary for the compilation of an Tender; or
         2. Use information contained in the Request documents for any purpose other than the preparation and submission of an Tender.
  1. Tender Validity Period
     + 1. The Tenderer may withdraw it Tender at any time prior to acceptance of its Tender by notifying the Principal in writing.
       2. Unless the Tenderer withdraws its Tender under clause 6.2(1), the Tenderer agrees that its Tender will remain open for acceptance by the Principal for the Tender Validity Period.
       3. The Tender Validity Period may be extended or further extended by the Principal by advising each Tenderer in writing at any time or times.
  2. Departures, Non-compliances and Alternative Tenders

The Request will specify whether, and on what terms, departures, non-compliances and alternative Tenders will be considered by the Principal.

* 1. Disclosure of Tender and Tender Information
     + 1. The Principal may:
          1. Make copies of the Tender and Tender Information; and
          2. Provide the Tender and any Tender Information (including Financial Information) to its officers, employees, agents and contractors and any officer or employee of any other State Agency involved in the Request,

For the purpose of evaluating the Tender.

* + - 1. The Tenderer agrees and acknowledges that its Tender and its Tender Information:
         1. Are subject to the *Freedom of Information Act 1992* (WA); and
         2. May be disclosed by the Principal or the State under a court order, upon request by a Minister, Parliament or any committee of Parliament or if otherwise required by law.
      2. By submitting a Tender, the Tenderer releases the Principal and the State from all liability whatsoever (including for negligence) for any loss, injury, damage, liability, costs or expense resulting from the disclosure of its Tender and its Tender Information under this clause 6.4by the Principal or the State.
      3. The Tenderer agrees and acknowledges that the powers and responsibilities of the Auditor General for the State under the *Financial Management Act 2006* (WA) and the *Auditor General Act 2006* (WA), the Principal will not make public any part of the Tender or any Tender Information that the Tenderer expressly and reasonably nominates in its Tender as confidential. However, the Principal may require the Tenderer to withdraw any claim to confidentiality in respect of any part of the Tender or any Tender Information as a condition of further consideration, or acceptance, of the Tender.
  1. Joint and Several Liability

If a Tender is submitted by a consortium of two (2) or more persons either by way of joint venture, partnership or otherwise, the Tender is binding on those persons jointly and severally.

* 1. Assignment of Tender

A Tender is not assignable or transferrable by the Tenderer without the prior written consent of the Principal**.**

* 1. Property in Tender

A Tender is, upon submission, the absolute property of the Principal and will not be returned to the Tenderer. Subject to clause 6.4, nothing in this provision affects the ownership of intellectual property rights of the Tenderer in the Tender.

1. GENERAL
   1. Authorised Officers and Representatives

Any matter which may be done, or notice which may be given, by the Principal may be done, or given, by an authorised officer or nominated representative of the Principal.

* 1. Conflict of Interest
     + 1. The Tenderer must, prior to any acceptance of its Tender by the Principal, disclose to the Principal any information that is or might be relevant to determining whether an actual, potential or perceived conflict of interest exists or might exist in relation to the Tenderer or the performance of the Contract (if awarded) by the Tenderer.
       2. The Tenderer must declare any relevant information under clause 7.2(1) immediately upon identifying or becoming aware of that information.
       3. The Principal may, in its discretion, accept or reject the Tender if the Principal considers that the Tenderer has, or could reasonably be considered to have, an actual, potential or perceived conflict of interest in relation to the Request or the performance of the Contract (if awarded).
  2. No Bribe, Inducement or Offer of Employment
     + 1. The Tenderer must not, without the prior written consent of the Principal, directly or indirectly approach or communicate with any officer or employee of the Principal having any connection or involvement with the Request with respect to:
          1. An offer of employment; or
          2. Availability of employment,

With the Tenderer or any related entity.

* + - 1. The Tenderer must not directly or indirectly offer a bribe, gift or inducement to any officer or employee of the Principal in connection with the Request.