

# Conditions relating to the quotation process

## 1. Acknowledgement

The Respondent (you) acknowledge that:

- a) No legal relationship will exist between you and the Council unless your Quotation is accepted in accordance with **clause 8.1**.
- b) You participate in this procurement process at your own risk
- c) You are responsible for the cost of preparing and submitting your Quotation and all other costs arising from this procurement process
- d) The Council is not obliged to accept the lowest priced quotation or any quotation
- e) This invitation and any other information supplied by or for the Council is not, and does not purport to be, complete as to all the information that you may require to assess the opportunity
- f) All documents (as distinct from the information contained in the RFQ) submitted in response to the invitation become the property of the Council on submission
- g) The Quotation will remain open for acceptance for 90 days from the closing date in consideration of the Council undertaking to consider that Quotation, unless otherwise agreed between the parties
- h) Your Quotation must be kept confidential until you are notified of contract award
- i) May publish the name of the Successful Respondent. The Council may also publicly release the price, brief reason for selection and the provisions of the Contract generally as required by the Procurement Policy and in accordance with the Local Government Act 1999.
- j) You may not assign (or declare trust over) the benefit or obligations of your Quotation, except with the Council's prior consent in writing
- k) If at any time there is a material change to your circumstances that may have an adverse effect upon your ability to perform the Contract or materially alters any information in your Quotation, you must immediately notify the Council's Contact Person in writing
- l) You must disclose any actual or potential conflict of interest regarding the consideration of Your Quotation or performance of the Contract. If at any time prior to contract award an actual or potential conflict of interest arises or may arise for you, you must immediately notify the Council's Contact Person in writing
- m) If you are selected by Council as the successful Respondent that, upon entering into an agreement with the Council, you will be considered to be a public officer for the purposes of the Independent Commissioner Against Corruption Act 2012 (SA) (ICAC Act) and will be required to comply with the ICAC Act and any Directions and Guidelines issued pursuant to the ICAC Act.

## 2. Diversity and Discrimination

The Contractor:

- a) Must ensure the Contractor's personnel respect any differences relating to culture, gender orientation, sexual preference and religion that exist in connection with the engagement with the City of Tea Tree Gully, at any City of Tea Tree Gully workplace or worksite
- b) Agrees discrimination, bullying or harassment or any acts of violence, including violence against women, will not be tolerated at any City of Tea Tree Gully workplace or worksite

- c) Agrees to take affirmative action to manage complaints of discrimination, bullying, harassment or violence relating to the Contractor's personnel

### **3. Improper Behaviour**

It is disqualifying behaviour to:

- a) Engage in collusive practice, anti-competitive conduct, conduct that is misleading or deceptive or contrary to law
- b) Obtain improper assistance of a current or former employee of the Council or otherwise use information improperly obtained from the Council
- c) Violate the Council's policies regarding the offering of inducements to the elected members or employees
- d) Influence the outcome of the evaluation process by lobbying any elected member or employee of the Council or any potential member of the evaluation panel.

### **4. Governing Law**

The laws in South Australia govern the Quotation Process. You must comply with all relevant laws in preparing and submitting your Quotation and taking part in the Quotation Process.

### **5. Discretions of the Council**

In addition to its other rights stated in this invitation, the Council:

- a) May elect not to consider any information supplied by you that is not requested in the RFQ Documents
- b) May suspend, vary, extend the timelines or abandon the Quotation Process at any time before contract award
- c) May waive/vary any obligation of all Respondents under this invitation
- d) May exclude from consideration a Quotation that has not been submitted by the Closing Day/Time
- e) May allow another party to take over the Quotation in substitution for the original Respondent
- f) May invite additional Respondents to submit quotations before the closing time
- g) May, after the closing time, allow all Respondents to change their Quotations
- h) May accept the whole or part of a Quotation, unless the Quotation states specifically to the contrary or the Council has agreed otherwise
- i) May contract with deletions or additions to the form of Contract indicated in this invitation. Subject to law, the Council has absolute discretion in the exercise or non-exercise of its rights under the Quotation Process and is not obliged to give reasons for a decision.

### **6. Preparing and Submitting a Quotation**

#### **6.1 Enquiries**

Any enquiries must be directed only to the Council's Contact Person. An explanation or amendment to this RFQ is not valid unless in a written addendum issued by the Council.

#### **6.2 Timetable**

A timetable stated is indicative only and may change without notice.

### 6.3 Trade qualifications

On the Closing Date you must have available any licence, registration or certification required by law to provide the Deliverables and enter into the Contract.

### 6.4 Due Diligence

A Quotation must not be expressed to be subject to due diligence enquiries yet to be made.

### 6.5 Format, Content and Submission of Quotations

The Council expects that your Response will:

- be completed using the response templates provided by the Council, with any other requested information attached to these templates
- be in English
- quote prices in Australian dollars
- be clear and legible, and with the effect of any alterations or erasures also being clear.

### 6.6 Quotation for the whole only

A Quotation must be for the whole of the Deliverables in accordance with the specifications, unless otherwise agreed by Council.

### 6.7 Correcting or adding to a Quotation

To correct or add to a Quotation already submitted, the correction and/or additional material must be in writing and be lodged with the Council before the Closing Date/Time.

### 6.8 Non-conforming Quotations

A Quotation that does not comply with the requirements of the Request for Quotation documents is non-conforming and might not be considered by the Council.

However, the Council may, at its sole discretion, choose to consider and accept a non-conforming Quotation (having regard to the evaluation criteria). Respondents who submit a non-conforming Quotation are encouraged to also submit a conforming Quotation.

The Council will give preference to Respondents who submit offers which fully comply with the Council's requirements; however, non-conforming Quotations will be considered where the Respondent can demonstrate that:

- a) Their bid will be more cost effective without jeopardising the desired outcomes and levels of service
- b) The rights and interests of both parties are protected
- c) Superior levels of service can be achieved whilst conforming with the above
- d) New cost-effective technology, procedures or techniques are offered which can meet the requirements of the above.

Respondents who seek to reduce costs by compromising workplace health and safety, service, or other factors which would reduce the rights or interests of the Council will be deemed to be non-conforming and may be excluded.

## **7. Evaluation and Selection**

### **7.1 Further Information**

After the closing time, for the purpose of clarifying any aspect of your Quotation, the Council may in writing request you to:

- a) Attend an interview
- b) Allow the Contact Person / Contract Administrator to inspect Your workplace or the Workplace of Your proposed sub-contractor
- c) Give further information in writing
- d) Make a presentation to the evaluation panel for the purpose of speaking about Your Quotation as to why it offers the Council value for money.

A request as above is not an opportunity to amend a Quotation submitted. You are not obliged to comply with the request, but a failure to comply may be taken into consideration in the evaluation of your quotations.

### **7.2 Evaluation Criteria**

After the closing time Quotations will be evaluated in a fair, equitable and clear manner using the information in the Quotation and any other information available to the Council.

Council may assess Responses according to criteria specified within the RFQ, or if no criteria have been specified, according to some or all of the following general criteria:

- Compliance with RFQ Documents (including attachments, contract and addenda); organisational capability and management; demonstrated relevant experience (including prior performance); methodology; total price/cost; suitability of the proposed goods/services; compliance with Council policies and legislated requirements.

### **7.3 Checking**

The Council may perform such security, probity and/or financial checks and procedures as the Council thinks desirable in relation to Respondents and their associates (including related entities, consortium members, subcontractors and their respective officers or employees). You agree to provide all reasonable assistance to the Council in this regard.

## **8. Post Evaluation Processes**

After evaluation of Quotations, the Council may choose to accept a Quotation, negotiate with one or more Respondents, issue a further invitation for quotations/tenders (to selected Respondents or on an open basis), or abandon the Quotation process.

If the Council notifies a Respondent as being preferred by the Council to be awarded to Contract subject to negotiation about any outstanding issues, at any time the Council may terminate those negotiations if the Council thinks those negotiations are unlikely to be successful. The Council might then notify another Respondent as being preferred to be awarded the Contract, to the same basis as above.

### **8.1 Acceptance of a Quotation**

A Quotation is not accepted unless and until the Council gives written notice of acceptance to the successful Respondent. The Council may give that notice by delivery, pre-paid post or email to an address and contact person stated in the Quotation.

If before issue of a notice of acceptance, the Council issues to the Respondent a written order for the whole or any of the Deliverables, that order is governed by the Contract (so far as can be made applicable) as read with the Quotation submitted.

## **8.2 Notice to Unsuccessful Respondents**

After the Quotation Process terminates, the Council will notify each unsuccessful Respondent that the Council did not accept its Quotation. If requested by the Council, an unsuccessful Respondent must return or destroy all copies of this invitation under their control.

## **9. Confidentiality**

The Council understands the need to keep commercial matters confidential in appropriate circumstances, but reserves the right to disclose some or all of the contents of your quotation and related information:

- a) as detailed above in **clause 1(i)**
- b) to the Australian Competition and Consumer Commission (ACCC) if the Council reasonably suspects, or is notified by the ACCC that it reasonably suspects, that there is cartel conduct or unlawful collusion in relation to this quotation process (whether or not the suspicion relates to your quotation), and/or
- c) as required by applicable laws, including the Local Government Act 1999, the Independent Commissioner Against Corruption Act 2012 (SA) (ICAC Act) and the Freedom of Information Act 1991.

## **10. Probity**

If you consider that the Quotation Process has failed to accord you fair right to be considered as a successful Respondent, or that it has been prejudiced by any breach of these conditions or other relevant principle affecting the Quotations or their evaluation, you must immediately, in writing, notify the alleged failure of breach to the Council's Contact Person (or if the failure concerns the Council's Contact Person, to the Council's Chief Executive Officer). Notification must set out the issues in dispute, the impact upon your interests, any relevant background information and the outcome desired. Delay in notification of probity breach, or notification after the announcement of the successful Respondent will preclude you from relying upon or taking action based on such breach. A probity dispute would be resolved according to any dispute resolution provisions in the form of Contract indicated in this invitation so far as can be made applicable.