



## PART 3 – CONDITIONS OF TENDER

Tender Name:

Prequalified Supplier Arrangement -  
Wet and Dry Hire of Plant and Equipment

Reference Number:

**T2021006**

Closing Date:

Friday, 27<sup>th</sup> August 2021

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## PART 3: CONDITIONS OF TENDER

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## 1. DEFINITIONS

1.1 In these Conditions of Tender, except where the context otherwise requires:

**'Closing Time'** means the Closing Time specified on the front cover of the Conditions of Tender.

**'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 Council and supplied or made available by Council to the Tenderer; or
- (b) created by the Tenderer, from the material supplied or made available to the Tenderer by Council for the purposes of submitting the Tender.

**'Contact Person'** means the Contact Person specified in the Specifications.

**'Contract'** has the meaning given in the General Conditions of Contract.

**'Contract Price'** has the meaning given in the General Conditions of Contract.

**'Contractor'** has the meaning given in the General Conditions of Contract.

**'Council'** means McKinlay Shire Council.

**'General Conditions of Contract'** means the General Conditions of Contract comprising Part 4 of the Request for Tender.

**'GST'** has the meaning given in the General Conditions of Contract.

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

**'Local Government'** has the meaning given in the General Conditions of Contract.

**'Tender'** means a Tender lodged in response to the Request for Tender.

**'Tenderer'** means any person lodging a Tender.

**'Tender Response'** means the Tender Response comprising Part 3 of the Request for Tender, including any templates or attachments to be completed and included in a Tender.

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

**'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*.

**'Special Conditions of Contract'** means the Special Conditions of Contract (if any) comprising Part 5 of the Request for Tender.

**'Specification'** means the Specification comprising Part 2 of the Request for Tender, including any amendment or addition to the Specification.

## 2. STRUCTURE OF REQUEST FOR TENDER

2.1 The documents comprising the Request for Tender are, collectively:

- (a) Part 1 – Specification (read and keep this part); and
- (b) Part 2 – Tender Response which, when completed by the Tenderer, comprises the Tender of the Tenderer (complete and return this part); and
- (c) Part 3 – Conditions of Tender (read and keep this part); and
- (d) Part 4 – Conditions of Contract (read and keep this part); and

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

- (a) Specification;
- (b) Tender Response.
- (c) Conditions of Tender;
- (d) Conditions of Contract;

2.3 The Request for Tender is not an offer. The Request for Tender is an invitation for persons to submit an offer for the supply of the goods and/or services detailed in the Specification.

## 3. TENDER BRIEFING/SITE INSPECTION

3.1 This Clause 3 only applies if the Specification (part 1) states that attendance at a Tender briefing/site inspection is mandatory.

- 3.2 If attendance at the Tender briefing/site inspection is mandatory, each Tenderer must attend the Tender briefing/site inspection at the time and place specified in the Specifications.
- 3.3 The Tender briefing/site inspection will provide Tenderers with the opportunity to clarify any uncertainties with the Contact Person prior to the Closing Time.
- 3.4 If attendance at the Tender briefing/site inspection is mandatory:
- (a) please confirm (by telephone or email) with the Contact Person your attendance at the Tender briefing/site inspection no later than the date specified in the Specifications for the purposes of this Clause 3.4(a); and
  - (b) failure to attend the Tender briefing/site inspection will render the Tenderer ineligible to Tender.

## **4. OBTAINING INFORMATION**

- 4.1 Council will provide the Tenderer with the Request for Tender. No fee is payable for the supply of the Request for Tender.
- 4.2 Any additional information required by a Tenderer may be obtained from the Contact Person.
- 4.3 A Tenderer must not direct a request for information to, or seek to discuss the Request for Tender process with, any Councillor or officer of Council other than the Contact Person.
- 4.4 Council will not be bound by any advice or information furnished by a Councillor or officer of Council with respect to the Request for Tender.
- 4.5 Information provided to the Tenderer by or on behalf of Council:
- (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 Council as accurate, correct or adequate.
- 4.6 If Council makes information available to a Tenderer, Council reserves the right to distribute the information to each Tenderer who has obtained a copy of the Request for Tender from Council.
- 4.7 If requested by Council, the Tenderer must:
- (a) provide further information relating to the Tender; and
  - (b) give a presentation at a time and place nominated by Council:
    - (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 Council and its agents to inspect any facility or equipment the Tenderer proposes to use in complying with the terms and conditions of the Contract; and
  - (d) authorize Council and its agents (in writing, if required) to contact any referee nominated by the Tenderer; and
  - (e) authorize Council (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 Council considers may be able to provide that information.
- 4.8 Council may provide information to Tenderers in electronic format, in addition to the hard copy format.
- 4.9 Where there is an inconsistency between the information in the electronic format and the hard copy information, the latter prevails.

## **5. RESPONSIBILITIES OF TENDERER**

- 5.1 Before submitting its Tender, each Tenderer must:
- (a) carefully read and consider the Request for Tender and any other information made available by Council with respect to the Request for Tender and the process of Tendering for the Contract; and
  - (b) read and consider all information relevant to the risks, contingencies and other circumstances relevant to the Request for Tender; 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 and other items necessary, suitable or desirable to enable the Tenderer to discharge its obligations under the Contract; and
  - (e) not rely upon information provided by or on behalf of Council; and
  - (f) independently verify any information provided by or on behalf of Council, and satisfy itself that the information is adequate and accurate; and
  - (g) satisfy itself that the information in its Tender is accurate and complete; and
  - (h) satisfy itself that its Tender complies in all respects with the requirements of the Conditions of Tender.
- 5.2 In evaluating Tenders and determining with whom it will enter the Contract, Council 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 offered by the Tenderer.
- 5.4 Council will not be responsible for the payment of any expenses or losses incurred by the Tenderer in:
- (a) attending any briefing or site inspection under Clause 3; 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 Council; or
  - (b) any officer or agent of Council,
- as an inducement or reward that could influence the actions of the person in relation to the Tender.

## **6. FORMAL REQUIREMENTS**

- 6.1 The Tender must be submitted in writing in the form of the Tender Response.
- 6.2 The Tender Response must be fully completed, and include all supporting documents and materials required by each of the Conditions of Tender and the Tender Response.
- 6.3 The Tender Response must contain the Tenderer's:
- (a) full name; and
  - (b) Australian Business Number; and
  - (c) address, facsimile number and email for the service of notices.
- 6.4 If the Tenderer operates as a firm, the Tender Response must contain:
- (a) the full names and addresses of each member of the firm; and
  - (b) the business name under which the firm trades; and
  - (c) the firm's address, facsimile number and email for the service of notices; and
  - (d) the firm's Australian Business Number.
- 6.5 If the Tenderer is a corporation, the Tender Response must contain details of the corporation's:
- (a) name; and
  - (b) business name (if applicable); and
  - (c) Australian Business Number; and
  - (d) registered office; and
  - (e) address, facsimile number and email for the service of notices; and
  - (f) the name, telephone number and address (if different from the address for service of notices) of a natural person who is authorised by the corporation to represent it in relation to the Tender.

- 6.6 If the Tenderer is a consortium or a joint venture, the Tender Response must contain details of:
- (a) the name of each member; and
  - (b) the structure of the consortium or joint venture, including the proposed managerial structure; and
  - (c) the role to be played by each member in complying with the terms and conditions of the Contract; and
  - (d) in the case of a consortium, the member who is to be the principal contractor on behalf of the consortium.
- 6.7 The Tender Response must be duly executed in a manner that binds:
- (a) if the Tender is submitted by 1 Tenderer— the Tenderer; or
  - (b) if the Tender is submitted by more than 1 Tenderer — each Tenderer.
- 6.8 The Contract Price in the Tender Response must be:
- (a) in Australian dollars; and
  - (b) unless otherwise specified in the Tender Response, GST inclusive.
- 6.9 The identity of the Tenderer is fundamental to Council. For the purposes of a Tenderer's Tender, the Tenderer is the person, persons, corporation or corporations:
- (a) who is named as the Tenderer in the Tender Response; and
  - (b) who has duly executed the Tender Response in a manner that binds the Tenderer.
- 6.10 In submitting its Tender, the Tenderer must provide reasonable evidence of the insurance taken out and maintained by the Tenderer to cover its obligations under the Contract.

## **7. CONFORMING AND NON-CONFORMING TENDERS**

- 7.1 Council may at its discretion accept a non-conforming tender.
- 7.2 Each non-conforming Tender must be accompanied by a clear summary of all points of difference between the non-conforming Tender and a conforming Tender.
- 7.3 Each non-conforming Tender must be submitted on a separate Tender Response.
- 7.4 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.
- 7.5 If more than one conforming Tender is lodged, each Tender must be accompanied by a clear summary of all points of difference between each conforming Tender.
- 7.6 Council is not obliged to consider any Tender that does not comply with the requirements of the Conditions of Tender.

## **8. LODGEMENT OF TENDER**

- 8.1 Each Tender may be submitted via TenderLink or Email ([tenderbox@McKinlay.qld.gov.au](mailto:tenderbox@McKinlay.qld.gov.au)) or by lodging it in the Tender Box at the main office.
- 8.2 The Tenderer must ensure that each Tender of the Tenderer is received by Council by the Closing Time.
- 8.3 Council may extend the Closing Time at its discretion.
- 8.4 A Tenderer must not alter or add to the Tender Response unless required by the Conditions of Tender.
- 8.5 A Tender is irrevocable for 90 days after the Closing Time.
- 8.6 The period in Clause 8.5 may be extended by mutual agreement between the Tenderer and Council.
- 8.7 Each Tender constitutes an offer by the Tenderer to Council to:
- (a) supply the goods/services/goods and services detailed in the Specification; and
  - (b) otherwise satisfy the requirements of the Specification on the terms and conditions of the Contract.

- 8.8 Where a Tenderer lodges a non-conforming Tender:
- (a) the conforming and non-conforming Tenders must be submitted separately; and
  - (b) the non-conforming Tender must be clearly marked, "ALTERNATIVE TENDER"

## 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, and in particular, conforming Tenders and any non-conforming Tender that Council chooses to consider, will be evaluated by reference to the sound contracting principles in section 106 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 Tenders, and any non-conforming Tender that Council chooses to consider, will also be evaluated by reference to the evaluation criteria (if any) specified in the Tender Response.
- 10.3 Each Tender will be evaluated using the information provided in the Tender Response.
- 10.4 If a Tender Response for an Offer 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.
- 10.5 In evaluating Tenders, Council may:
- (a) require presentations from Tenderers; and
  - (b) conduct interviews with Tenderer's staff and subcontractors; and
  - (c) contact Tenderers' referees; and
  - (d) investigate a Tenderer's structure and management, and that of any relevant subsidiary or related corporation; and
  - (e) make its own assessment of the Tenderer's ability to comply with the terms and conditions of the Contract at the Tendered price; and
  - (f) 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; and
  - (g) shortlist Tenderers using the evaluation criteria specified in the Conditions of Tender.
- 10.6 Each Tenderer must give Council any cooperation and assistance reasonably requested of the Tenderer to facilitate consideration of their Tender.
- 10.7 Compliance criteria for the Request for Tender are specified in the Tender Response. Each Tender will be assessed on a Yes/No basis as to whether each of the compliance criterion is satisfied by the Tenderer or not. If a Tender Response is assessed as "No" in respect of a criterion, the Tender may be rejected.
- 10.8 Qualitative criteria for the Request for Tender are specified in the Tender Response. The qualitative criteria may be weighted to indicate the relative degree of importance that the Principal places on the technical aspects of the supply of the **Goods/Services/Goods and Services**. Each Tenderer must address each of the qualitative criteria specified in the Tender Response. If a Tenderer fails to address any of the qualitative criteria in the Tender Response, its Tender may be rejected.



## **11. CLARIFICATIONS AND VARIATIONS**

- 11.1 Council may issue to Tenderers before the Closing Time:
- (a) additional information; and
  - (b) information clarifying or correcting information previously provided,
- to assist them in preparing their Tenders.
- 11.2 If Council issues information to Tenderers under Clause 11.1, each Tenderer must take the information into account in the preparation of its Tender.
- 11.3 After the Closing Time, Council may (without limiting its options):
- (a) request clarification or further information from any Tenderer; and
  - (b) invite all Tenderers to change their Tenders in response to an alteration to the Specification or any of the terms and conditions of the Contract; and
  - (c) negotiate with one or more Tenderers upon any aspect of their Tenders.

## **12. COMMISSIONS AND INCENTIVES**

- 12.1 A Tender will not be considered if anybody offers or gives anything to a Councillor of Council, or any officer or agent of Council, 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 remain at all times the property of Council; and
  - (b) must not use the Confidential Information for any purpose other than preparing its Tender; and
  - (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; and
  - (d) must allow access to the Confidential Information by Relevant Persons only to the extent necessary to enable the Tender to be prepared; and
  - (e) must obtain Council's written consent before disclosing Confidential Information to a person other than a Relevant Person.
- 13.2 The consent of Council to disclosure of the Confidential Information by the Tenderer may be given or withheld on such terms and conditions as Council considers appropriate.
- 13.3 The Tenderer's obligation under this Clause 13 continues after closure of Tenders and award of the Contract.
- 13.4 Council reserves the right to retrieve from a Relevant Person any Confidential Information held by that person, subject to Council 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 Council 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 13 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 Council, and not acquired directly or indirectly from Council; or
  - (c) it has received from Council written notification that Council no longer requires the Tenderer to keep the item confidential.



## **14. ACCEPTANCE OF TENDER**

- 14.1 Council:
- (a) will not be bound to accept the lowest or any Tender; and
  - (b) may accept more than one Tender; and
  - (c) may accept a Tender in part or in whole.
- 14.2 Council may accept a Tender from a Tenderer by giving written notice in the form of a Letter of Acceptance to the Tenderer who submitted the Tender to Council.
- 14.3 The Contract will not come into existence until Council has given written notice in the form of a Letter of Acceptance to the Tenderer.
- 14.4 When the Contract comes into existence the Tenderer becomes the Contractor for the purposes of the General Conditions of Contract.

## **15. RIGHT TO INFORMATION AND DISCLOSURE**

- 15.1 The RTI Act provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including Local Governments).
- 15.2 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.
- 15.3 Information provided by the Tenderer is potentially subject to disclosure to third parties pursuant to the RTI Act.
- 15.4 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 in its Tender. Council cannot guarantee that any information provided by the Tenderer will be protected from disclosure under the RTI Act.
- 15.5 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.
- 15.6 Council accepts no responsibility for the accuracy or adequacy of any information it provides to Tenderers concerning the content or effect of the RTI Act.
- 15.7 Council 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.

## **16. OWNERSHIP OF TENDERS**

- 16.1 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 Council on submission and will not be returned to the Tenderer.
- 16.2 However, the Tenderer shall retain copyright and other intellectual property rights in respect of the Tender except to the extent specified in the Contract.
- 16.3 Council may reproduce the Tender for the purposes of evaluation.

## **17. INFORMATION PRIVACY**

- 17.1 Council is bound by the provisions of the *Information Privacy Act 2009*.
- 17.2 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 Council 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 Council with the evaluation of the Tender.
- 17.3 The Tenderer must indemnify Council against any claim, damage or loss (including legal costs and expenses) that Council may incur as a consequence of a breach by the Tenderer of the warranty in Clause 17.2.
- 17.4 Any Personal Information exchanged between the Tenderer and Council must be dealt with in accordance with the *Information Privacy Act 2009*.
- 17.5 The Tenderer must immediately notify Council upon becoming aware of any breach of this Clause 17.

## **18. POLICIES PARTICULAR TO THE PRINCIPAL**

- 18.1 Tenders will be evaluated by reference to criteria which are particular to the Principal as follows:
- (a) Procurement policy (regional preference)
  - (b) Occupational health and safety policy.

