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| User Guidance  This document is part of the **MW21-LG (Local Government) Version** and differs from the MW21 standard NSW government forms. Note that User Guidance in this document is based on functionality in Microsoft 365 Word.   1. Guide notes   This standard form contains guidance in hidden text, i.e.:  **GUIDE NOTES,**  Guide Note examples   1. **Viewing guide notes**   If the guide notes are not visible, click on the **Home/Show/Hide** button. Paragraph Show / Hide button in Word  If this does not work:  **•** Go to **File/** **Options** menu;  • Select the **Display** tab;  **•** Tick the **Hidden Text** check box and click the **OK** button.  This process can also be used to hide guide notes in a finished document.   1. Insertion points   Each ‘»’ shows where input is required. Click onto each ‘»’ and overtype.  **For inserting Contract Title and Contract Number**   * On the **File/ Info** menu select ‘**show all properties’**; * Overwrite the ‘***title*’ property** ‘*Contract Name’* with the new Contract Title/ Name; * Overwrite the ‘***subject*’ property** ‘*Contract No*.’ with the new Contract Number.   This will insert the Contract Title and Contract No. in the footer for each page;   1. When drafting is completed   Remove all guide notes manually or by the following steps:  **•** On the Home/ **Editing** menu click **Replace**, then (if required)  **•** Click the **More** button;  **•** Click the **Format** button, click on **Font**;  **•** Tick the **Hidden** check box, untick other boxes and click the **OK** button;  **•** Click the **Special** button, click on **Any Character**; then  **•** Click the **Replace All** button.  Note that the option ‘Print hidden text’ has not been checked in File/ Options/ Display.   1. After drafting is completed and the ‘hidden text’ guide notes are hidden or removed:   Update the Table of Contents and number of pages automatically when printing by ensuring that File/ Options/ Display/ Printing options – ‘Update Fields before printing’ box is checked. Alternatively, update before printing by:   1. Table of Contents  * Right click anywhere in the Table of Contents; * Select ‘Update Field’; * Select ‘Update entire table’; and * Click the OK button.   Note, for larger files, track changes, if on, should be off during this update.   1. Number of pages  * Right click the number in ‘*THERE ARE 14 PAGES IN THIS SECTION’* above the first clause 1’; * Select ‘Update Field’; then * the number of pages in the Conditions of Tendering should be shown.  1. Finally, delete this User guidance, along with the following Section Break.   **Always check that the final document (printed or saved as a pdf) is complete** |

Conditions of Tendering

the Table of Contents should be updated after drafting is completed and after the removal of guide notes. refer to the above user guidance for procedure.

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**The following clauses from the NSW Government MW21 Standard forms – conditions of tendering have been deleted from this document (as these generally relate to NSW Government Policy requirements). Refer to the MW21 suites of documents on Buy.NSW if any of these clauses are required.**

* Best Practice Contractor Accreditation Scheme
* NSW Government Policies, Codes and Guidelines (includes Procurement Policy Framework, Supplier Code of Conduct and Industrial Relations/ workplace management)
* Adjustment for customs tariffs
* Commonwealth whs accreditation scheme requirements
* Aboriginal participation
* Skills, training and diversity in construction
* Information for “Payment Claim Worksheet”
* Tender Concept Design

# Conditions of Tendering

CHECK THE CONTRACT NAME AND CONTRACT NUMBER HAVE BEEN INCLUDED IN THE FOOTER.

THE NO OF PAGES BELOW IS A FIELD AND SHOULD BE UPDATED AFTER COMPLETION AND REMOVAL OF HIDDEN TEXT.

THERE ARE 16 PAGES IN THIS SECTION

Ensure that the Council has a firm intention to proceed to contractprior to calling tenders.

All clauses are mandatory unless stated otherwise

Include also in the relevant subsection any other condition or notice considered necessary.

This section includes notices to tenderers.

**The Conditions of Tendering section does not form part of the Contract.**

## General

### Summary of the tendered Works

insert the name of council or delete prompt and brackets. include council profile if considered USEFUL.

» (the Principal) is seeking tenders from appropriately qualified and experienced organisations for the:

Insert an overview of the scope of the contract works that are being TENDERED. ensure the main elements are clearly described. use wording that is compatible with the ‘DESCRIPTION of the works’ in the general conditions of Contract information item 3 (where applicable).

»

»

delete or amend where the MW21 general conditions of contract forms part of the RFT.

PARAGRAPH

Refer to the *Principal’s Documents* for more detail of the Works.

end of PARAGRAPH

### Legal framework

These Conditions of Tendering form part of the Request for Tenders (RFT) issued for the provision of the tendered Works. The following conditions apply to this RFT:

* by issuing this RFT the Principal does not intend to create any contract or other legal relationship with a Tenderer;
* this RFT is not an offer by the Principal which is capable of acceptance;
* no binding Contract or any other legal relationship will be formed between the Principal and the successful Tenderer or any Tenderer unless and until the Principal accepts a tender by written notification or signed agreement and
* the Principal has no liability for any tendering costs incurred by a Tenderer.

Refer to clause - **Acceptance of Tender** for further information.

### Tenderer’s responsibility

The RFT documents do not purport to contain all relevant information in relation to the Contractor's activities or the Works, and are provided solely on the basis that the Tenderer will be responsible for:

* making its own assessment of the matters referred to in the RFT documents; and
* satisfying itself as to the correctness and sufficiency of its Tender for the due and proper performance and completion of the work under the Contract in accordance with the RFT documents.

Refer to General Conditions clause 7 - Site Conditions with regard to information provided by the Principal concerning the Site and the responsibilities of the Tenderer and Contractor.

The Tenderer is responsible for reviewing the RFT Documents (including all addenda) provided by or on behalf of the Principal to ensure that it has a complete copy of all documents.

Tenderers must promptly notify the Contact Person in accordance with these Conditions of Tendering if an error, omission, discrepancy, ambiguity or inconsistency is identified in, or between any of the RFT Documents.

### Requests for information and clarifications

Include either Option 1 or Option 2 and delete the option that does not apply.

Use Option 1 where an online forum has been established for communications and to control direct contact to the contact person.

Use Option 2 where communications are to be directed to the contact person.

option 1

All communications with the Principal and all requests for information or clarification with regard to this Request for Tenders (RFT) must be made through the Principal’s online forum.

Requests for information or clarification will be directed to the nominated Contact Person. The Contact Person will respond in writing and may distribute both the enquiry and the response to all tenderers.

Tenderers should not approach the Contact Person directly unless requested to do so.

end of option 1

Option 2

All communications with the Principal and all requests for information or clarification with regard to this Request for Tenders (RFT) must be made to the Principal’s Contact Person.

The Contact Person will respond in writing and may distribute both the enquiry and the response to all tenderers.

end of option 2

Tenderers must not approach any other Council officers or elected members with regard to this RFT.

If a Tenderer considers the subject matter of an enquiry to be confidential, it must clearly indicate this in its request. The Principal, in its sole discretion, shall determine whether the matter raised is of a confidential nature. If the Principal does not consider the subject matter of the enquiry to be of a confidential nature, it shall give the Tenderer the opportunity to withdraw the enquiry.

The Principal reserves the right not to respond to enquiries made within 5 Business Days prior to the close of tenders.

insert council’s tendering communication platform and web address, if AVAILABLE. otherwise delete PARAGRAPH 1.

PARAGRAPH 1

The Principal’s online forum is: »

Access to the Principal’s online forum is by web address: »

end of PARAGRAPH 1

include the following details as required. Delete PARAGRAPH 2 where it is not required or useful to list a CONTACT person and/ or its contact details.

Paragraph 2

The Contact Person is:

|  |  |
| --- | --- |
| Name: | » |
| Telephone number: | » |
| E-mail address: | » |

end of paragraph 2

end of Clause Requests for information and clarifications

### Termination of Tender Process

Where, due to a change in circumstances, the Principal decides that it is not in the Principal’s interest to proceed, it reserves the right, in its absolute discretion, to terminate the tender process for this RFT by notice to tenderers utilising the same method as was used to invite tenders. No liability for any tendering costs incurred by tenderers arises due to the exercise of the Principal’s right to terminate the tender process.

### Special Tendering Conditions

this schedule allows Principals/ councils to include special conditions while MAINTAINING common conditions in the body of the Conditions of Tendering.

Conditions of Tendering – **Schedule of Special Tendering Conditions** applies to these Conditions of Tendering

## Tenderer Eligibility

### Acceptable Legal Entities

The Principal contracts only with recognised and acceptable legal entities. The Principal does not contract with firms under any form of external administration. Any tender submitted by an unincorporated business such as a sole trader, partnership, or business name must identify the legal entity that proposes to enter the contract.

The Principal will not award this Contract to a Tenderer that is a trustee if the Tenderer cannot demonstrate that it will be able to meet all of the requirements of the contract, including the financial assessment requirements, for the entire contract period.

### Quality management

Include either Qm Option 1 or Qm Option 2 and delete the option that does not apply.

Use Qm Option 1 when all tenderers are prequalified with the NSW Government or certification to AS/NZS ISO 9001:2016 is required.

Use Qm Option 2 when open tenders will be called or QM Option 1 does not apply.

Note, this Clause may not be applicable for low value contracts (E.G. <$100,000).

Qm Option 1

The Principal may elect to pass over a Tender from a Tenderer that does not have current full certification of its Quality Management System to AS/NZS ISO 9001:2016.

Submit the information identified in Tender Schedules - **Schedule of Quality Management Information**.

Qm Option 2

The Principal may elect to pass over a Tender from a Tenderer that does not demonstrate the capacity to systematically plan and manage the quality of its work in accordance with the*NSW Government Quality management guidelines (Construction Procurement)* (Edition 4) which are available on the buy.nsw website at <https://buy.nsw.gov.au/categories/construction>

Submit when requested the information identified in Tender Schedules - **Schedule of Quality Management Information.**

end of Qm Option 2

End of Clause - quality Management

### Work health and safety management

Tenderers must demonstrate their capacity to manage work, health and safety (WHS) in accordance with the *NSW Work Health & Safety management guidelines (for Construction Procurement) (Edition 6)* (*WHSM Guidelines*). These *Guidelines* are available on the buy.nsw website at: <https://buy.nsw.gov.au/categories/construction>

Submit with the Tender Form, the completed Schedule and the information required by Tender Schedules - **Schedule of WHS Management Information - PART A**.

Submit when requested, the completed Schedule and the information required by Tender Schedules - **Schedule of WHS Management Information – PART B**

following ENDORSEMENT by THE NSW GOV. CONSTRUCTION LEADERSHIP GROUP (CLG) on 03 NOVEMBER 2020:

* FOR CONTRACTS WITH AN ESTIMATED VALUE LESS THAN $3M (EX GST), A CERTIFIED WHS MANAGEMENT SYSTEM IS NOT REQUIRED; BUT
* A SAFETY MANAGEMENT PLAN, AS REQUIRED BY NSW LEGISLATION, AND CONSISTENT WITH THE 6TH EDITION OF THE WHS GUIDELINES IS REQUIRED. SECTION 7 AND APPENDIX B OF THE GUIDELINES DEAL WITH THE PLAN REQUIREMENTS; AND
* THE SAFETY MANAGEMENT PLAN WILL NEED TO SATISFY THE AUDIT CHECKLIST IN APPENDIX D OF THE WHS GUIDELINES.

use whs option 1 for contracts valued at $3m or more, or with a lower value where:

* the work has a significantly high WHS risk; or
* the project as a whole requires its application.

Delete the option if it does not apply

whs option 1

A Tender will not be accepted from a Tenderer that does not have a Corporate WHS Management System acceptable to the Principal in accordance with the *WHSM Guidelines*.

end of whs option 1

end of Clause - Work health and safety Management

### Environmental management

Tenderers must demonstrate their capacity to manage environmental matters in accordance with the *NSW Government Environmental management guidelines (Construction Procurement) (Edition 4)* (*EM Guidelines*) available on the buy.nsw website at: <https://buy.nsw.gov.au/categories/construction>

Submit with the Tender the information identified in Tender Schedules - **Schedule of Environmental Management Information – Part A.**

delete both the following EM options where neither is required. the Plan located in the Schedules to Preliminaries- schedule for environmental management will then APPLY.

include em option 1 or EM option 2 for contracts where:

* the work is of high environmental risk;
* the work interfaces with other projects of high environmental risk;
* the work is otherwise sensitive in terms of the environment; or
* the project as a whole requires its application.

use em option 1 for contracts valued at $10m or more, or with a lower value where the environmental risks are very high.

use em option 2 for contracts valued at less than $10m.

delete the option that does not apply.

if em option 1 or EM option 2 i included, delete Schedules to Preliminaries- schedule for environmental management.

EM option 1

A Tender will not be accepted from a Tenderer that does not have a Corporate Environmental Management System acceptable to the Principal in accordance with the *EM Guidelines*.

Submit when requested, the Schedule and the information required by Tender Schedules - **Schedule of Environmental Management Information – PART B**.

end of em option 1

em option 2

A tender will only be accepted from a tenderer that have submitted a site-specific environmental management plan acceptable to the Principal in accordance with the *EM guidelines 4th Edition*.

Submit when requested, the Schedule and the information required by Tender Schedules - **Schedule of Environmental Management Information – PART B**

end of em option 2

End of Clause - Environmental Management

### Financial assessment

By submitting a tender for this RFT, the Tenderer agrees that the Principal may engage private sector consultants to financially assess tenderers. Financial details of tenderers may be obtained by an external Financial Assessor for assessment. Financial Assessors have an obligation to safeguard the financial details obtained.

include paragraph 1 where council intends to UTILIZE a financial assessor under the NSW Government scheme.

otherwise delete paragraph 1

paragraph 1

Information about the financial assessment services scheme (Scheme SCM2491) is available on the buy.nsw website at:

<https://buy.nsw.gov.au/schemes/financial-assessment-services-scheme>

end of PARAGRAPH 1

Include paragraph 2 where council wishes to disclose the name of the financial assessor to be used.

otherwise delete paragraph 2.

paragraph 2

The Principal intends to use <insert company name> to financially assess tenderers for this RFT.

end of PARAGRAPH 2

The main criteria considered in financial assessment of tenderers are:

Net Tangible Assets (total assets, excluding any assets of company directors, less total liabilities less intangible assets);

Current Ratio (ratio of current assets to current liabilities); and

Working Capital (current assets less current liabilities).

The Principal considers a Tenderer meeting the following financial indicators, with no other significant detrimental financial characteristics, to be financially satisfactory in respect of its Tender:

Net Worth exceeds 5% of the initial Contract Price;

Current Ratio exceeds 1; and

Working Capital exceeds 10% of the initial Contract Price.

Deviations from the above indicators will not necessarily prevent the Principal from considering any tender.

The Principal may elect to pass over a Tender from a Tenderer if any of the above financial assessment indicators are below a threshold acceptable to the Principal. The Principal may, at its discretion, also consider other actions where defects in the financial assessment may be able to be rectified.

Submit, when requested by the Financial Assessor or Principal, the Financial Assessment information shown in Tender Schedules - **Schedule of Financial Assessment Information**.

## Contract details

### Site

The Principal may provide geotechnical or other information concerning the Site. Site information may not form part of the Contract.

Refer to Preliminaries clause – **Site** for Site related contract requirements and for other site activities and contracts (if any) which may affect this site.

### General Conditions of Contract

The RFT documents include a copy of the MW21-LG General Conditions of Contract.

### Provisional Sums

delete this clause and the above heading unless the contract includes provisional sums.

If this clause is deleted, also delete:

* Tender Schedules – Schedule of Provisional Sums;
* sections of the lump sum or schedule of rates schedule dealing with provisional Sums; and
* preliminaries clause - provisional sums.

where this clause is included, complete:

* Tender Schedules – Schedule of Provisional Sums, and
* preliminaries clause - provisional sums for a MW21 contract or

Provisional sums should only be used when essential, E.G. as an item for workshop machinery for a school that could not be priced at the time of tender.

The Contract includes work subject to payment as a Provisional Sum. Refer to the list of Provisional Sums in Tender Schedules – **Schedule of Provisional Sums** and toPreliminaries clause - **Provisional Sums**.

Refer also to General Conditions of Contract clause 13 - **Payment and Retention.** Provisional Sumsinclude an amount for GST.

Complete (sign) and submit with the Tender Form, Tender Schedules – **Schedule of Provisional Sums**.

End of clause - Provisional Sums.

### Provisional Rate Amounts

delete this clause and the above heading unless Provisional rate AMOUNTS ARE included in the contract.

If this clause is deleted also delete:

* tender Schedules – schedule of Provisional rate amounts;
* the sections of the Schedule of Prices - Lump Sum or Schedule of Rates dealing with Provisional Rate Amounts; and
* THe Schedule and clause in the preliminaries (REFERENCED below) that deal with PROVISIONAL rate amounts.

where this clause is included, refer to the tender SCHEDULE and the referenced preliminaries schedule for the application and guidance on the use of Provisional rate AMOUNTS.

The Contract includes provisional items of work subject to payment on the basis of tendered rates. Refer to:

* Tender Schedules - **Schedule of Provisional Rate Amounts;**
* Preliminaries Schedule **– Schedule of Amendments to the General Conditions of Contract - Application of Provisional Rates;** and
* Preliminaries Clause **– Application of Provisional Rate Amounts**

Complete and submit with the Tender Form, Tender Schedules - **Schedule of Provisional Rate Amounts**.

### Foreign currency adjustment

Delete this clause and the above heading unless the estimated value of imported goods exceeds:

* $1.0 million in value;
* 50% of the estimated Contract Price; or
* another value considered appropriate by Council.

If this clause is deleted also delete Preliminaries clause - Currency Fluctuation.

Tenderers requiring all or part of any imported content to be subject to currency adjustment as detailed in Preliminaries clause - **Currency Fluctuation** must submit a breakdown of the Tender amount which details the items and the value in all applicable currencies.

End of clause - Foreign Currency Adjustment.

### Insurance

Include the applicable works & public liability insurance options below and delete the options that do not apply.

where the MW21 general conditions of contract forms part of the RFT, Also select the corresponding option and delete other options in Contract Information item 9

Note, THe Principal arranged insurance (pai) option via icare is deleted. To use this option, icare requires a nsw government agency to arrange and pay for the insurance and administer the contract. refer to the standard form GC21 conditions of tendering on the buy.nsw website if this option is applicable

#### Works Insurance

wks ins option 1

The Principal will arrange insurance of the Works (and any temporary works) as required under General Conditions of Contract clause - **Insurance**. Tenderers are not required to allow in tenders for payment of premiums for this insurance.

The Principal will provide a copy of the insurance policy on request.

wks ins option 2

The Contractor must arrange insurance of the Works (and any temporary works) and pay all premiums in accordance with General Conditions of Contract clause - **Insurance**.

end of wks ins options

#### Public Liability Insurance

PL ins option 1

The Principal will arrange insurance for public liability as required under General Conditions of Contract clause - **Insurance**. Tenderers are not required to allow in tenders for payment of premiums for this insurance.

The Principal will provide a copy of the insurance policy on request.

PL ins option 2

The Contractor must arrange insurance for public liability and pay all premiums in accordance with General Conditions of Contract clause - **Insurance**.

end of PL ins options

#### Asbestos liability insurance

The Contractor must arrange any asbestos related insurance required by law. Any other asbestos related insurance is at the discretion of the Contractor. The Contractor will not be entitled to any additional payments for asbestos related insurance. The Principal does not require the Contractor to hold any particular Asbestos Liability Insurance under General Conditions of Contract clause – **Insurance**.

#### Other Insurance

Unless otherwise advised by the Principal, the Contractor must arrange and pay all premiums for all other insurance required under General Conditions of Contract clause – **Insurance**.

For professional indemnity insurance, a Certificate of Currency or evidence of the ability to obtain the required insurance, such as a letter from a broker or insurer, may be required as a condition of acceptance of the tender.

End of Clause - insurance

### Proposed Subcontractors and Consultants

Delete this clause and the above heading unless information is REQUIRED on Proposed Subcontractors and Consultants who will carry out significant proportions of the work.

If this clause is deleted also delete Tender Schedules - Schedule of Proposed Subcontractors and Consultants

Information on proposed Subcontractors and Consultants will be taken into account in assessing the tenders. The identification of Subcontractors and Consultants before the award of the Contract will be taken as an indication of the team approach to be used by the Contractor and a demonstration that the Contractor will not trade off different subcontractors’ prices to obtain a lower price.

**delete the following PARAGRAPH if details of all proposed subcontractors and consultants is required. If a limit applies amend the threshold.**

**note that the tenderer may use other subcontractors and consultants than those proposed.**

**As per the General CONDITIONS of contract, the contactor always remains responsible for its SUBCONTRACTORS.**

**Paragraph**

Complete Tender Schedules - **Schedule of Proposed Subcontractors and Consultants. f**or any individual Subcontract or consultancy agreement valued at more than $100,000 or 2% of the Contract Price, whichever is the greater,

**End of PARAGRAPH**

Submit when requested the completed Tender Schedules -- **Schedule of Proposed Subcontractors and Consultants.**

End of Clause - Proposed Subcontractors and Consultants

### Preferred Subcontractors

Delete this clause and the above heading unless Preferred Subcontractors are included in the RFt.

If this clause is deleted also:

* delete Preliminaries clause - Preferred Subcontractors; and

where this clause is included, list the Preferred Subcontractors in:

* Preliminaries clause - Preferred Subcontractors where the MW21 general conditions of contract forms part of the RFT

**include either option 1 or option 2 and delete the option that does not apply**

The Contract includes work by Preferred Subcontractors in accordance with Preliminaries clause - **Preferred Subcontractors**.

End of clause - Preferred Subcontractors.

### Design development and documentation resources

Delete this clause and the above heading where there is minimal design development required by the contractor.

where this clause is included, Include this clause when Design Development and Documentation forms part of the contract works and the proposed design resources will be assessed as part of a scored PRICE: NON-PRICE Tender evaluation.

note that while the principal cannot demand that specific personnel be employed for the contract works, it can require personnel with EQUIVALENT qualifications and similar experience be used.

Submit when requested the completed Tender Schedules -- **Schedule of Design and Documentation Resources** to demonstrate that each consultant and key staff proposed have the proven competence, qualifications and experience to satisfactorily perform the proposed design development and documentation functions.

End of clause - Design development and documentation resources

### Development application

Delete this clause and the above heading unless the Contractor is required to lodge a development application.

Note: If this clause is deleted also Delete the Preliminaries clause - Development Consent.

The successful Tenderer must complete and lodge a Development Application. See Preliminaries clause - **Development Consent**.

End of clause - Development Application.

### Long Service Levy

Delete this clause and the above heading where:

* the works do not include building or construction work; or
* the works include building or construction work which is estimated AT LESS than the Long Service Levy threshold of $250,000 (*current as of 1 january 2023*).

where this clause is included

Include OPTION 1 or option 2 and delete the option that does not apply

* use option 1 where the principal will pay any required levy.
* use option 2 where the contractor must pay any required levy

option 1

The Principal will pay the required levy. The Tenderer should not allow for the cost of the Long Service Levy in its tender.

end of option 1

option 2

Include OPTION 2A or option 2B and delete the option that does not apply

The Contractor must pay the required levy. Refer to Preliminaries clause **- Long service levy**.

end of clause - Long service levy.

## Current policies

### Disclosure of Tender and Contract information

Details of this tender process and any contract awarded as a result of the tender process may be disclosed in accordance with the *Government Information (Public Access) Act 2009* (NSW).

### Exchange of information by the Principal

By submitting a Tender, the Tenderer authorises the Principal to gather, monitor, assess, and communicate to other State and Commonwealth Government agencies or Local Government Authorities information about the Tenderer’s financial position and its performance in respect of any contract awarded as a result of the tender process. Such information may be used by those agencies or authorities in considering whether to offer the Tenderer future opportunities for work.

### Security and Ownership of Documents

* + - 1. Security of provided Tender Documentation

Delete paragraph 1 unless Council requires that tender DOCUMENTATION be treated as confidential. this would also prevent DISCLOSURES to the media.

Paragraph 1

All RFT documents and information made available by the Principal remain the property of the Principal and are provided on condition that they are treated as confidential by the Tenderer and are used only for the purpose of preparing a Tender.

The Tenderer must obtain the Principal’s prior written consent to the release of any information concerning the Tender or any subsequent Contract for publication in any media.

End of paragraph 1

Delete paragraph 2 unless restriction of access to certain documents is required.

Note: If this clause is deleted also delete Preliminaries clause - Restricted Documents.

Document restrictions may be required for works that involve security E.G.: utility control systems , electronic security installations and the like.

Ensure all relevant documents are marked “restricted”.

paragraph 2

All RFT documents marked as “restricted” are classified maximum security documents. No copies are to be made by tenderers, their agents or anyone else other than for tendering purposes. All such documents and copies are to be returned to the Principal on completion of the tendering process.

End of PARAGRAPH 2

* + - 1. Ownership of submitted Tender Documentation

All documents, materials and information submitted as part of or in support of a tender will become the property of the Principal.

Delete paragraph 3 where the principal wishes to UTILIZE tender information for other purposes.

Paragraph 3

Unless otherwise provided by the Contract, the Tenderer will be entitled to retain copyright and other intellectual property rights in the documents, materials and information submitted as part of its tender.

End of PARAGRAPH 3

End of clause - Security and Ownership of documents

### Compliance with Principal’s Policies

As Council is a ‘non-GOVERNMENT sector body’, Clauses dealing with Compliance with the following NSW Government Policies:

* Procurement Policy Framework;
* Supplier Code of Conduct;
* NSW Industrial Relations Guidelines: Building and Construction Procurement; and
* workplace relations management,

have been DELETED from these CONDITIONS of tendering.

Where they are applicable or beneficial, copy the relevant clauses and applicable tender schedules from the Standard Form conditions of tendering and tender schedules at <https://info.buy.nsw.gov.au/resources/gc21>.

* + - 1. Statement of Business Ethics

the following general clause is considered applicable to all councils. Include specific COUNCIL policies in the Schedule of Special Tendering Conditions.

Note these CONDITIONS only apply to tendering. Include additional CONDITIONS in the preliminaries for the CONTRACT.

The Principal is committed to the highest standards of honesty, fairness and integrity in all its business dealings. The Principal has adopted a Code of Conduct for Councillors, contractors and staff.

Refer to Schedule of Special Tendering Conditions - **Statement of Business Ethics and Conflict of Interest** for details of the Principal’s policiesapplying to this tender process, tenderers and any subsequent contract.

End of clause - Compliance with principal’s Policies

### Dealing with Modern Slavery

**Council may consider deletion of this clause and the above heading for low-value contracts. If this clause is deleted also delete Tender Schedules - Schedule of dealing with Modern Slavery.**

**the Modern slavery act NSW (2018) requires that reasonable steps be taken to ensure that goods and services procured by and for local government agencies are not the product of modern slavery. The act applies from From 1 January 2022,**

**Councils are required to include the steps taken to deal with modern slavery in their annual report.**

**Guidance on Modern slavery and procurement is available at:**

[**https://buy.nsw.gov.au/resources/modern-slavery-and-procurement**](https://buy.nsw.gov.au/resources/modern-slavery-and-procurement)

Tenderers must demonstrate that they understand Modern Slavery and will implement processes and procedures to identify and manage the risks of Modern Slavery.

Complete and submit when requested, Tender Schedules - **Schedule of dealing with Modern Slavery.**

A Tender will not be accepted from a Tenderer that does not provide the completed Schedule which, where required, includes a declaration by the Contractor.

### Unconditional undertakings - approved institutions

For the purpose of giving unconditional undertakings, banks, building societies, credit unions and insurance companies listed by the Australian Prudential Regulation Authority (APRA) as being regulated by the APRA are acceptable. Lists appear at the APRA website at

<https://www.apra.gov.au/list-of-registered-financial-corporations>

**delete the following paragraph where only undertakings from APRA listed institutions are acceptable.**

**paragraph**

The Principal is prepared to consider proposals from Tenderers for the approval of Unconditional Undertakings by substantial financial institutions, not registered by APRA, which lawfully carry on business in Australia. The Principal may require the submission of evidence demonstrating the substance and status of any proposed financial institution without cost to the Principal.

**end of paragraph**

End of clause - Unconditional undertakings - approved institutions

## Further information

### Addenda to RFT Documents

for CONSISTENCY and to avoid confusion, it is recommended that:

* + - addenda be the only mechanism used to provide information to all tenderers, including responses to queries,
    - addenda be only issued where necessary for clarity or to amend an aspect of the rft documents,
    - the wording of each addendum be carefully considered to avoid any INADVERTENT inconsistency or DISCREPANCY.

addenda are NOT required and not recommended for:

* individual responses to tenderers that direct TENDERERs to applicable requirements in the rft documents;
* tender queries and responses made using an online forum or with the contact officer unless they change the an aspect of the rft documents.

there are significant risks where a RECORD of queries and responses is included in an addendum as the record may INADVERTENTLY alter the RFT documents and may create misunderstandings in the wording used.

a sample addendum is AVAILABLE in the MW21 sample letters section of the buy.nsw site.

If, as a result of:

* a request for clarification from a Tenderer;
* the need for a correction or the resolution of a *Fault* (i.e. ambiguity, inconsistency or discrepancy);
* a change in the Principal’s requirements;
* a change in a date or deadline related to the tender process; or
* for any other reason,

the Principal issues an instruction amending the RFT documents or tender process, the instruction will be issued in writing to all tenderers in the form of an Addendum, which becomes part of the RFT documents.

Written Addenda issued by the Principal are the only recognised explanations of, or amendments to, the RFT documents. The Principal will not be bound by any verbal advice or information given by any officer of Council or any third party in respect of this tender, unless it has been confirmed in writing and included in the RFT documents.

### In-House tenders

delete this clause and the above heading if not required

Council may submit an in-house tender for the tendered works.

### Site access restrictions

Include this clause when part of the site or buildings are occupied and unrestricted access by Tenderers is not desirable or possible, otherwise delete.

In consultation with the client, establish security and access restrictions to be imposed on visitors associated with tendering and insert details below.

Refer to Preliminaries clauses - Site Access and Limitations and Occupied Premises.

Tenderers and their agents or representatives must:

use option 1 where the CONTACT officer arranges permission.

use option 2 where another person arranges permission.

delete the option that does not apply

Option 1

* apply to the Principal in accordance with clause **- Requests for information and clarifications** to obtain permission to inspect the Site at least 72 hours before access to the Site is required.

end of Option 1

Option 2

* obtain permission to inspect the Site from the Client’s Representative at least 48 hours before access to the Site is required;

upon arrival, at the pre-arranged time, introduce themselves at the Client Representative’s office prior to undertaking their inspection of the Site.

Insert relevant details.

The Client’s Representative’s details are:

|  |  |
| --- | --- |
| Name: | » |
| Telephone number: | » |
| e-mail address: | » |
|  |  |
| The Client’s Representative may be contacted: | |
| on the following days: | » |
| between the hours of: | » |

Tenderers should apply to the Principal in accordance with clause **- Requests for information and clarifications** if they experience difficulty in securing an appointment with the Client’s Representative for a site inspection.

End of option 2

end of clause - Site Access Restrictions

### Pre-Tender meeting

Delete this clause and the above heading unless a pre-Tender meeting (including any briefing or site inspection) will be held.

where this clause is included, select the PREFERRED option to inform tenderers of the location and timing of the pre-tender meeting. it is recommended that only one information site be used for any times/ dates to avoid misinformation if changes are required.

Use option 1 where the information is provided in these Conditions of Tendering.

use option 2 where the information will be provided in the tender advertisement or invitation.

delete the option not used.

OPTION 1

A pre-tender meeting will be held on the date, at the time and at the place stated below:

|  |  |  |
| --- | --- | --- |
| **Date** | **Time** | **Location/ place** |
| » | » | » |

END of option 1

OPTION 2

A pre-tender meeting will be held on the date, at the time and at the place nominated in the advertisement or invitation.

end of OPTION 2

The Contact Person will be available at that time to answer any Tenderer’s queries regarding the Tender.

if it is essential that all tenderers attend the pre-Tender meeting (i.e. their tenders cannot be considered unless they attend), include option 3, otherwise delete.

option 3

Attendance by tenderers at the pre-Tender meeting is mandatory. Tenders submitted by tenderers who fail to attend will be passed over.

End of option 3

Include following for non-mandatory meetings, otherwise delete.

Tenderers are requested to confirm, via email to the Principal’s Contact Person, that they will attend the pre-tender meeting at least 3 Business Days prior to the nominated date.

End of clause - Pre-Tender Meeting

## Preparation of Tenders

### Price Criteria Information

Complete all Schedules requiring prices or rates. In particular, ensure that:

* all prices and rates include GST unless expressly stated otherwise;
* all prices and rates include appropriate allowances for overheads and profit; and

select option 1 or option 2 based on type of tender. Delete the option that does not apply.

option 1

* the ‘Total (Lump Sum tendered including GST)’ in the Tender Schedules - **Schedule of Prices – Lump Sum** is correct and is the same amount as the ‘Contract Price’ shown in the Tender Form.

end of option 1

option 2

* the ‘Total of Schedule of Rates (including GST)’ in the Tender Schedules – **Schedule of Rates** is correct and is the same amount as the ‘Contract Price’ shown in the Tender Form.

end of option 2

Refer to the Schedule of Special Tendering Conditions with regard to the application of other price criteria, if any.

End of clause - Price Criteria Information

### Non-Price Criteria Information

Delete the subclauses that do not apply

refer to detailed guidance in the referenced tender schedules.

#### Mandatory Participation Criteria

Mandatory Participation Criteria must be met by the Tenderer. Failure to satisfy the Mandatory Participation Criteria may result in the relevant Tender being passed over.

Complete and submit with the tender the information shown in Tender Schedules - **Schedule of Mandatory Participation Criteria Information.**

#### Weighted Non-Price Criteria

Refer to Conditions of Tendering - **Evaluation of Tenders** for information on the evaluation of weighted non-price criteria.

Complete and submit with the tender the information shown in Tender Schedules - **Schedule of Weighted Non-Price Criteria Information.**

#### Other Non-Price Criteria

The Principal requires information about the Tenderer. Complete and submit with the tender the information shown in Tender Schedules - **Schedule of Non-Price Criteria Information.**

### Alternative Tenders

#### Alternative Tenders generally

Delete the subclause ‘Alternative Tenders generally’ and above subheading if alternative tenders are not invited. OTHERWISE amend as required.

The Principal may consider alternative tenders, provided the alternative tender meets the scope, functional intent and design concept expressed in the tender document. Where an alternative tender is proposed, submit a detailed description of the alternative stating clearly the manner in which it differs from the detailed requirements of the RFT documents and including separate tender schedules applicable to the alternative.

Delete paragraph 1 if tenderers submitting an alternative Tender are not required to submit a fully conforming Tender. this will make the comparison of tenders more difficult.

paragraph 1

Alternative tenders will not be considered unless the Tenderer has submitted a conforming tender.

End of Paragraph 1

Include the following paragraph 2 where alternatives will not be considered for certain aspects of the work, otherwise delete.

List aspects, areas or elements for which alternative tenders will not be considered, E.G.: site footprint, general layout and interrelation of major spaces, products, systems, performance of equipment.

paragraph 2

Alternatives will not be considered for the following aspects of the work:

»

End of paragraph 2

end OF SUBclause ‘Alternative Tenders generally

#### Mandatory Alternative Tenders

Include the following subclause ‘mandatory Alternative Tenders’ where a price is sought from every Tenderer for a specified mandatory alternative, otherwise delete this subclause and the above subheading.

Note: If this subclause is deleted also delete Tender Schedules - Schedule of Mandatory Alternative Tenders.

Fully describe what the alternative Tender must cover.

List all mandatory alternative tenders in Tender Schedules - Schedule of Mandatory Alternative Tenders.

Complete and submit with the Tender Form, Tender Schedules – **Schedule of Mandatory Alternative Tenders**. Do not include the price of any mandatory alternative in the price stated on the Tender Form.

The Principal may elect not to proceed with any mandatory alternative tender.

End of subclause - Mandatory Alternative Tenders

End of clause - Alternative Tenders

### Optional Additional Work

Delete this Clause and the above heading unless tenderers are required to submit tenders for optional additional work.

If this clause is deleted also delete tender Schedules – Schedule of optional additional work.

where this clause is included, Optional Additional Work must be distinct items of work that are fully specified in the RFT documents.

only include optional additional work when there is a firm commitment to proceed with the work within available funds. limit optional additional work to a maximum of 10% of the pre-tender estimate.

Complete and submit with the Tender Form, Tender Schedules - **Schedule of Optional Additional Work**. Do not include the price for any optional additional work in the price stated on the Tender Form.

The Principal may elect not to proceed with any optional additional work.

End of clause - Optional Additional Work

### Qualifications and Departures

Qualifications and departures include any condition, offer, interpretation, assumption or proposal of any nature appearing on any documents submitted with or within the Tender which constitute any variation of, omission from, or addition to this RFT.

Where the Tenderer considers a qualification or departure to its Tender is appropriate, or wishes to clarify an assumption with respect to the RFT document, it may discuss its concern using the on-line forum and/ or utilise the option, if available, to submit an alternative tender.

select option 1 or option 2. Delete the option that does not apply.

select option 1 if Qualifications or departures are not permitted. Note, using this option may reduce the number of tenderers, increase prices and may still result in tenders including Q & D.

Note: If option i is deleted also delete Tender Schedules - Schedule of Qualifications and Departures Information.

use option 2 if tenders with Qualifications or departures will be considered.

option 1

Tenders should not include qualifications or departures from the RFT document. Tenders including qualifications or departures may be passed over.

end of option 1

option 2

Refer to Conditions of Tendering - **Evaluation of Tenders** for information on the evaluation of qualifications and departures.

Complete and submit with the tender the information shown in Tender Schedules - **Schedule of** **Qualifications and Departures Information**.

end of option 2

End of clause - Qualifications and departures

### Technical data

Delete this clause and the above heading unless specific technical information is required for the evaluation of tenders.

Note: If this clause is deleted also delete Tender Schedules - Schedule of Technical Data.

where this clause is included, Keep the number of items to a minimum and only ask for information which is required for Tender evaluation, E.G. where non-price criteria are to be scored and weighted.

Do not ask for confirmation of compliance with contract requirements.

Complete and submit when requested, Tender Schedules - **Schedule of Technical Data**.

End of clause - Technical Data

### Program

Refer to preliminaries clause – program, as applicable.

delete this Clause and the above heading if a program is not REQUIRED. Note: If this clause is deleted also delete Tender Schedules - Schedule of program information.

where this clause is included, a program submitted with a tender can be useful in assessing the TENDERER’S understanding of the scope of work and proposed methodology.

however, if the tendered program is accepted with the tender, any DEPARTURES from the RFT document included in the program are ALSO accepted.

Submit a program in the form of a bar chart or network diagram, for carrying out the work under the contract, including all documentation and construction activities. Include allowances for likely holiday periods; any Milestones; any specified order of work and the provision of access and work by others.

Refer to Tender Schedules - **Schedule of Program Information** for additional requirements.

The program must show the logical relationship between activities and events and the sequence of activities which constitute the current critical path.

End of clause - program

## Submission of Tenders

### General

Tenders may only be submitted by the methods described in this Conditions of Tendering clause - **Submission of Tenders**. Tenders submitted by other means, including by email or given by hand to a Council representative or employee will not be considered.

### Documents to be submitted

Submit the documents listed in parts A and B below, in accordance with the respective instructions.

Do not change the text on the Tender Form or Tender Schedules, other than to insert the required information.

Do not include with tenders any brochures, advertising, product or company information or marketing brochures or presentations other than information expressly requested in the Tender Schedules.

Failure to meet the requirements of this clause may result in the Tender being passed over.

delete from the lists below (parts a & b) any schedules that are not required and have been deleted from the tender schedules.

#### Part A: Documents to be Lodged at close of Tenders

Complete and lodge, by the date, time and method stated in the tender advertisement, invitation and/ or the Timetable in the Tender Document title page, as applicable, the following documents and information:

**Tender Form**

Delete from the part a list below and include in the part b list any tender schedules that are not required to be LODGED at close of TENDERs. Only require schedules that are ESSENTIAL to compare tenders. these are PRIMARILY the schedules with prices.

amend the instruction in the relocated schedule and in the relevant clause in these conditions of tendering.

**Schedule of Prices – Lump Sum**

**Schedule of Rates**

**Schedule of Provisional Sums**

**Schedule of Provisional Rate Amounts**

**Schedule of Mandatory Alternative Tenders**

**Schedule of Optional Additional Work**

**Schedule of Local Procurement**

**Schedule of Qualifications and Departures Information**

**Schedule of Mandatory Participation Criteria Information**

**Schedule of Weighted Non-Price Criteria Information**

**Schedule of WHS Management Information: Part A**

**Schedule of Environmental Management Information: Part A**

list any additional tender schedules and documents required to be lodged at close of tenders, otherwise delete the insertion point.

»

Any tender that is not received in full (for Part A documents) at close of tenders may be passed over.

Acknowledge on the Tender Form, by listing the Addendum numbers, that the tender allows for all Addenda issued.

If more than one tender is lodged, mark each tender clearly as to whether it is a copy, an alternative tender, or a tender superseding another submission.

#### Part B: Documents to be Submitted When Requested:

include option 1 or option 2 and delete the option that does not apply.

use option 1 where all schedules and associated Documents are to be Lodged at close of Tenders, including schedules marked ‘Submit When Requested’.

use option 2 where the schedules MARKED ‘SUBMIT WHEN REQUESTED’ are not required to be Lodged at the close of Tenders but will be requested from the PREFERRED or shortlisted tenderer(s) at a later date in the tender evaluation process. this OPTION reduces unnecessary effort by other tenderers.

option 1

Notwithstanding that some Schedules in the Tender Schedules are marked ‘**Submit When Requested**’ and are so referenced in these Conditions of Tendering, complete and submit the following Schedules and any other documents and information requested by the Principal to allow further consideration of the Tender at the close of tenders, i.e., by the date, time and method stated in the tender advertisement, invitation and/ or the Timetable in the Tender Document title page, as applicable:

end of option 1

option 2

Complete and submit, by the date, time and method stipulated in any request, the following Tender Schedules, marked ‘**Submit When Requested**’, and any other documents and information requested by the Principal to allow further consideration of the Tender:

end of option 2

amend the list below as required for any tender schedules that are marked ‘Submit When Requested’ in the final RFT Documents,

note where individual SCHEDULES listed below are to be SUBMITTED at the close of tenders:

* relocate to part a;
* amend the instruction in the schedule to ‘SUBMIT WITH TENDER FORM’; and
* amend the text in the relevant clause in these conditions of tendering.

Tender schedules listed HERE MUST BE REQUESTED FROM THE PREFERRED TENDERER DURING THE tender evaluation.

**Schedule of Non-Price Criteria Information**

**Schedule of Program Information**

**Schedule of Technical Data**

**Schedule of Contract Information**

**Schedule of Proposed Subcontractors and Consultants**

* **Schedule of Design and Documentation Resources**

**Schedule of Financial Assessment Information**

* **Schedule of Quality Management Information**
* **Schedule of WHS Management Information: Part B**
* **Schedule of Environmental Management Information: Part B**

**Schedule of Dealing with Modern Slavery**

»

end of clause - Documents to be submitted

### Electronic Submission of Tenders

delete this Clause and the above heading if the Electronic Submission of Tenders option is not applicable.

#### Legal status

Tenders submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW), and shall be treated as confidential documents. The tenders will be given no lesser level of confidentiality, probity and attention than tenders submitted by other means, where permitted.

Tenderers should review the terms and conditions of the nominated system prior to uploading their tender. Lodgement of a tender electronically is evidence of a Tenderer’s acceptance of any conditions shown on the website of the nominated electronic tendering.system.

#### General

Tenderers must not change existing text in electronic tender forms other than to insert required information.

Tenderers who experience technical difficulties in lodging their tenders should utilize the support provided by the nominated electronic tendering system website.

Tender files must be checked by a reputable virus scanning application prior to submission and be found to be free from virus malicious code or other properties (including executable code) that may compromise the Principal’s IT environment.

It is the Tenderer’s responsibility to submit a tender that is complete and in an uncorrupted format. The Principal may decline to consider for acceptance, tenders that cannot be effectively evaluated because they are incomplete or corrupt.

Tenders received via electronic transmission, other than through the nominated electronic Tendering system site, will not be considered.

include option 1A or 1B and delete the option that does not apply.

use option 1A where Tenders must be submitted electronically and other lodgement options are not permitted.

use option 1B where Tenders may be submitted electronically and other lodgement options are also permitted.

option 1A

Tenders must be submitted electronically using the Principal’s nominated electronic tendering system. Tenders submitted by other means will not be considered.

end of option 1A

option 1b

Tenders may be submitted electronically using the Principal’s nominated electronic tendering system.

end of option 1b

use option 2A where Tenders must be submitted electronically through the NSW Government eTendering website.

use option 2B where Tenders must be submitted electronically through another nominated electronic tendering system:.

option 2A

Tenders submitted electronically must be lodged through the NSW Government eTendering website at: <https://tenders.nsw.gov.au>.

Login as an eTendering system user, locate the RFT web page and follow the on-screen instructions. Access is generally available 24 hours a day, 7 days per week.

end of option 2A

option 2B

insert the name of the principal’s electronic tendering system and its web address. AMEND the instructions if required.

Tenders submitted electronically must be submitted electronically using the Principal’s nominated electronic tendering system:

The Principal’s tendering system is: »

Access to the Principal’s tendering system is via: »

Login to the tendering system and search for this RFT by name and number.

Please note that electronic lodgement must be “fully complete” by the nominated time for the close of tenders as the electronic link is programmed to terminate at this time.

end of option 2B

#### Electronic Format for Submissions

Tenderers must comply with the conditions of the nominated system with regards to acceptable file types and file sizes. Unless otherwise required by the nominated electronic tendering system:

* tenders submitted electronically must be in a file format that can be read, formatted, displayed and printed by Microsoft Word 2021, or any format required by the RFT;

include the following dot points where cad files must be submitted. amend to suit the preferred format. delete if not required.

dot points

* any CAD files must be in DGN, DWG, or DXF format; and
* Tenderers must ensure that any CAD files submitted will correctly display and print in Microstation.

end of dot points

Insert any other specific file requirements, otherwise delete

»

#### File Compression

amend FOLLOWING paragraph, if necessary, to suit the requirements of the nominated electronic tendering system.

paragraph

Unless otherwise required by the nominated electronic tendering system, Tenderers may compress electronic tenders in any format that can be decompressed by WinZip. Tenderers must not submit self-extracting (\*.exe) zip files.

End of paragraph

End of Clause - Submission of Tenders

### Hard copy tenders

delete this Clause and the above heading if the options to Submit Tenders by hand using a tender box or by post are not applicable.

Tenders must be placed in a sealed envelope or package with no indication of the identity of the Tenderer.

#### Lodgement in physical Tender Box

Tenders may be lodged by hand using the Principal’s physical Tender Box.

Mark the envelope/ package as follows:

Insert the contract/ Tender name and No. and (if Required) closing date and time.

‘Tender for » No: » closing on » at »’

Lodge the tender envelope/ package in the Principal’s Tender Box at:

Insert the relevant street address

* »

delete the following subclause and subclause heading if the option to Submit Tenders by post is not applicable.

Subclause - Lodgement by post

#### Lodgement by post

Tenders may be lodged by post to be deposited in the Principal’s physical Tender Box.

Address the envelope/ package as follows:

The < *insert relevant addressee e.g., Chief Executive Officer*>

Insert the contract/Tender name and No. and (if Required) closing date and time.

‘Tender for » No: » closing on » at »’.

C/o Tender Box

Insert the relevant postal address

* »

Post the tender envelope/ package with sufficient time so that it is received prior to the close of tenders.

End of subclause – Lodgement by post

End of clause – hard copy tenders

### Special requirements for the two-envelope system

Delete this clause and the above heading unless use of the two-envelope system is required.

where this clause is included, note that:

* A two-envelope system is appropriate where a weighted price to non-price scoring process is used; and
* It is important that the Tender EVALUATION plan stipulates that the evaluation team not see the tender prices before the non-price evaluation is complete.

This RFT process is being managed under a two-envelope system. The Tender must be lodged in two separate clearly-identified packages.

The first package (Envelope 1) is for Tender Schedules and other documents containing information responding to the non-price tender evaluation criteria and must not include any price information.

The second package (Envelope 2) is for the Tender Form and any other Tender Schedules containing price information. Price information includes Contract Prices, Rates, Lump Sum Amounts, Provisional Sums, Provisional Rate Amounts and Amounts for Optional Additional Works or Alternative Tenders.

include option 1 or 2 and delete the option that does not apply.

include option 1 where Tenders must be submitted electronically.

include option 2 where Tenders may be submitted electronically or by hard copy.

option 1

Where nominated by the Principal, each package must be a single electronic file. Where not otherwise nominated or restricted, each package may be a single file, an identified set of electronic files or a set within a zipped file.

end of option 1

option 2

Where the tender is lodged electronically, unless specifically nominated by the Principal, each package may be a single file, an identified set of files or a set within a zipped file.

Where the tender is lodged by hand or by post, the two packages should be included in separate packages within the tender envelope.

end of option 2

Irrespective of the tender submission method used, each package must have an applicable identifier:

“Envelope 1: Non-price information”

“Envelope 2: Price information”

end of clause – Special requirements for the two-envelope system

### Late Tenders

In accordance with the *Local Government (General) Regulation 2021*, a late tender will not be considered unless the Tenderer satisfies the Principal that the Tender was lodged in sufficient time for the Tender to have been received by the closing date and time.

## Procedures after closing of Tenders

### Evaluation of Tenders

**refer to** [**https://buy.nsw.gov.au/buyer-guidance/source/select-suppliers/evaluation-criteria**](https://buy.nsw.gov.au/buyer-guidance/source/select-suppliers/evaluation-criteria) **for information on tender evaluation criteria.**

**Signing of tenders:**

**unless it is expressly stated that unsigned tenders will not be considered, Tenders where the tender Form and/ or other Tender Schedules are unsigned or the signature blocks are incomplete may be considered for EVALUATION provided it is clear what legal entity submitted the tender.**

however, it is recommended that The signature blocks in the tender Form and other Tender Schedules for the PREFERRED tenderer be completed prior to an award of contract, as this provides evidence:

* + **of the tenderer’s acceptance of applicable tender conditions as per the relevant schedules; and**
  + **that the tenderer intended to make the offer and will accept any subsequent contract.**

The names of the tenderers who submitted tenders by the due closing date and time will be published on the Principal’s website.

Tenders will be evaluated in accordance with the *Local Government (General) Regulation 2021*. Tenders will be evaluated on the criteria listed or referenced in these Conditions of Tendering.

In evaluating tenders, the Principal may take into consideration relevant factors including, but not limited to: whole of life costs; innovation; delivery time; quality offered; previous performance; experience; capability; work health and safety performance; environmental management performance; quality management capability; community relations; value adding including economic, social and environmental initiatives; and conformity.

#### Weighted Evaluation Criteria

Delete the following paragraphs and the above heading unless a weighted scoring process is to be used for Tender evaluation.

paragraphs

Insert the ratio of price to non-price criteria, E.G. ‘60:40’.

Tenders will be assessed using a weighted scoring process based on information provided with the Tender. The ratio of price to non-price criteria will be: » : »

The non-price criteria (in priority order with most important listed first) will be:

Insert the criteria that will be weighted and scored. minimize criteria to that required to compare tenders. ensure the criteria can be effectively scored. don’t include mandatory compliance requirements. Use the wording of the criteria in the approved Tender Evaluation Plan and relevant tender schedules.

list the criteria in order of importance. Note, it is not necessary or desirable to show the relative weightings of each criterion.

the tender schedule provided in Tender Schedules - Schedule of weighted Non-Price Criteria Information can be utilised for identifying specific information that tenderers are required to provide to address the specified non-price criteria.

|  |
| --- |
| **Weighted Non-Price Criteria** |
| * » |
| * » |
| * » |
| * » |

Delete the following paragraph 1 if no MINIMUM threshold applies.

paragraph 1

The Principal may elect to pass over a Tender from a Tenderer with an assessed score on any of the above non-price criteria that is below a threshold acceptable to the Principal.

End of Paragraph 1

End of Paragraphs

#### Local Procurement Criteria

Delete the following paragraph 2 and the above heading unless a weighting applies to the evaluation of Local Procurement in accordance with Council’s policy.

paragraph 2

Refer to Schedule of Special Tendering Conditions – **Local Procurement** for details.

End of Paragraph 2

note, the assessment of qualifications and departures is important in determining which tender appears to be the most advantageous. LGA REgulation s178 refers.

#### Qualifications, Omissions and related issues

The Principal may assess the value of any qualification in any Tender, without reference to the Tenderer, and compare tenders on the basis of the Principal’s assessed valuation.

The Principal may treat any detail required by the RFT documents which is omitted, illegible or unintelligible as failing to fulfil the relevant requirement.

#### Communications with Tenderers

the following paragraphs 3 deal with the principal’s right to seek tender clarifications. where a VARIATION of a tender is required, clause – ‘Variation of Tender’ applies.

Paragraphs 3

The Principal may seek clarification from a Tenderer regarding information contained in its Tender and may do so without notification to any other Tenderer.

A Tenderer may be invited to a one-on-one evaluation conference in order to review and clarify its Tender and to enable the Principal to interview key personnel identified in the Tender.

end of PARAGRAPHS 3

end of clause – Evaluation of Tenders

### Variation of Tender

use where LGA REgulation s176 applies, otherwise delete this clause and the above heading.

where this clause is included, it is applicable to the resolution of qualifications and departures identified in the tender that appears to be the most advantageous

Before the Principal accepts any tender, a Tenderer may vary its tender by:

* providing the Principal with further information by way of explanation or clarification; or
* correcting a mistake or anomaly.

Such a variation may be made either at the request of:

* the Principal, or
* the Tenderer but only if, in the circumstances, it appears reasonable to the Principal to allow the Tenderer to provide the further information or correction.

The Principal will not consider a variation of a Tender if the variation would substantially alter the original Tender.

If a Tender is varied in accordance with this clause, the Principal will notify, in writing, all other tenderers that have the same or similar characteristics as the varied Tender, and provide them with the opportunity of varying their tenders in a similar way.

### Acceptance of Tender

The Principal will:

* accept a tender by written notification;
* publish the name of the successful tenderer and, if required, the amount of the accepted tender on the Principal’s website;
* publish information in accordance with Government Information (Public Access) Act 2009 GIPA}; and
* notify tenderers whose tenders were not accepted that their tenders were unsuccessful; or
* if none of the tender submissions were accepted, a notice to that effect.

The Principal may accept tenders that do not conform strictly with all requirements of the RFT documents.

The Principal is not bound to accept the lowest or any tender. Tenders which do not comply with:

* a requirement of the tender document; or
* which contain conditions or qualifications not required or allowed by the tender document,

may be passed over.

note, with REGARD to the following paragraph, that a letter of award of contract accepting a tender accepts all qualifications in that tender that have not been removed by agreement with the tenderer.

refer to the notes and guidance in the GC21 General Conditions of CONTRACT Schedule: *Deed of Contract Agreement & Formal Instrument of Agreement* for more information on ACCEPTING a tender

No Tender, or qualification or departure from a contract condition or specification, is accepted unless the Principal gives an acceptance or formal agreement in writing.

Include option 1 when sections of work may not be awarded, otherwise delete.

if this option is used, provide a suitable breakup in the relevant tender schedules.

option 1

Tenders may be accepted for the whole of the work or specific sections as follows:

»

End of option 1

Include option 2 only when compelling reasons exist to award parts of the work to different Tenderers, otherwise delete.

if this option is used, provide a suitable breakup in the relevant tender schedules

note that the use of this clause may result in an increase in total costs of site establishment, preliminaries, contract administration (of the Contractor and the Principal).

option 2

Separate contracts may be awarded for specific sections to different tenderers as follows:

»

End of option 2

### Protection of privacy

The Tenderer warrants, in respect of any personal information provided in this Tender or any contract arising from this Tender, that the information is accurate, up to date and complete, and that nominated individuals authorise its collection and are aware:

that the information is being collected for the purpose of evaluating tenders and administering any contracts arising from those tenders and may be made available to other NSW government agencies or local government authorities for those purposes;

whether the supply of the information by the individual is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided; and

of the existence of any right of access to, and correction of, the information.

**REFER TO ATTACHED SCHEDULE OF Special Tendering Conditions**

## Schedule of Special Tendering Conditions

include in this schedule additional council conditions applying to the conditions of tendering.

included below, is an example (in recommended format) of the special conditions applying to dubbo reginal council. The council prob

delete/ amend/ replace as required.

### Statement of Business Ethics and Conflict of Interest

The Principal’s Statement of Business Ethics sets out the standards of behaviour that Council expects from its private sector partners. These standards of behaviour relate to fair, ethical and honest dealings with the Principal and ensuring that the best level of service is provided to the community.

Refer to the obligations of tenderers as set out in the Statement of Business Ethics at:

<https://www.dubbo.nsw.gov.au/About-Council/Our-Responsibilities/business-ethics>

In particular, the obligations require the Tenderer (with regard to this RFT) to:

* respect the conditions of the RFT and procurement obligations of the Principal;
* abstain from collusive practices;
* prevent unauthorised release of privileged and confidential information; and
* avoid unsolicited contact with Councilors, Staff and/ or delegates of the Principal.

Breaches of the Tenderer’s obligations under the Statement of Business Ethics may result in the Tenderer being ineligible to submit a Tender or obtain future work with the Principal.

* + - 1. Conflicts of Interest

#### Tenderers must identify if they have any actual or perceived Conflict of Interest in responding to this RFT. The Principal will seek to resolve any notified Conflict of Interest.

#### Submit with the Tender the completed Tender Schedules - **Schedule of Statement of Conflicts of Interest and Fair Dealings.**

delete/ amend/ replace local procurement policy as required.

### Local Procurement

The Principal is committed to buying from local businesses where such purchases may be justified on value for money grounds. Local business means a supplier that:

* is beneficially owned and operated by persons who are residents or ratepayers in the Principal’s Local Government Area (LGA);
* has its principal place of business within the Principal’s LGA; or
* otherwise has a place of business within the local area that solely or primarily employs or subcontracts persons who are residents or ratepayers in the Principal’s LGA.

Local Suppliers and Local Content may receive a 5% discount on price in the evaluation of Tenders. For further information search for the Principal’s ‘Procurement Policy’ at:

insert location of council’s local procurement policy where applicable.

»

Submit with the Tender the completed Tender Schedules - **Schedule of Local Procurement.**

### Canvassing of Council Officials

Any Tenderer who solicits or attempts to solicit support for their tender or otherwise seeks to influence the outcome of the tender process by:

* offering any inducement, fee or reward to any member or officer of the Principal, or any person acting as an adviser for the Principal; or
* canvassing any persons referred to in this document; or
* contacting any member or officer of the Principal about the tender or any process relating thereto, except as authorised by these Conditions of Tendering, including (but without limitation) for the purposes of discussing the possible employment of the member or officer,

will be disqualified from the involvement in the tendering process (without prejudice to any other civil remedies available to the Principal and without any prejudice to any criminal liability which such conduct by a Tenderer may attract), at the Principal’s discretion.

### Non-Collusion

Any Tenderer who:

* fixes or adjusts the amount of their tender by or in accordance with any agreement or arrangement with any other tenderer;
* enters into any agreement or arrangement with any other tenderer that it shall refrain from tendering or as to the amount of any tender to be submitted;
* causes or induces any person to enter such agreement or to inform the Tenderer of the amount or approximate amount of any rival tender for this RFT;
* canvasses any of the persons previously discussed in connection with the tender or the outcome of the tender process;
* offers to, agrees to, or does; pay any sum of money, inducement or valuable consideration, directly or indirectly to any person for doing, having done, causing, or caused to be done any act or omission in relation to any other tender or proposed tender;
* communicates to any person, other than the Principal, the amount or approximate amount of its proposed tender (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the tender, for insurance or contract guarantee bonds and/or performance bonds or professional advice required for the preparation of a tender),

may, at the discretion of the Principal, be disqualified from any further involvement in this tender process (without prejudice to any other civil remedies available to the Principal and without prejudice to any criminal liability which such conduct by a Tenderer may attract).

### Probity considerations

Council may conduct or procure independent research regarding the Tenderer, Tenderer's Associates and/or the Tenderer's joint ventures, partners, guarantors or shareholders and the information contained in its tender. Council reserves the right to take into account any matters revealed as a result of its probity investigations in evaluating the tender lodged by the Tenderer.

The Tenderer consents to such probity investigations being conducted.

Council will be under no obligation to provide the Tenderer with details of the results of its probity investigations. Council reserves the right to reject a tender or take such other action as it considers appropriate in light of any information that it receives as a result of conducting its probity investigations.

include the following paragraph where a Probity Advisor has been appointed, otherwise delete.

paragraph

The Principal has appointed the following Probity Advisor for this tender process:

|  |  |
| --- | --- |
| Name: | » |
| Telephone number: | » |
| e-mail address: | » |

End of paragraph

Should any Tenderer consider that it is not being accorded fairness in the evaluation process, immediate notice of its complaint must be given in writing through the Principal’s online forum.or the Probity Advisor, if nominated in the RFT documents.

The notification must set out the alleged failure, the impact upon the Tenderer’s interests, any relevant background information and the outcome desired.

In lodging its tender, the Tenderer agrees that any delay in notification of an alleged probity breach, or notification after the announcement of the preferred/ recommended Tenderer or the Contractor will operate as a waiver of any such breach, and will preclude a Tenderer from relying upon or taking action based upon such breach.

to add extra requirements, copy above clause heading and number and reword. use times new roman-font 10 for clause contents.

**END OF SECTION – CONDITION OF TENDERING**