

**Infrastructure Advisory Services**

**Conditions of Tendering**

[insert RFT name and number]

***[User Instruction: Insert the RFT name number in the footer.***

***The details must match those on the title page.***

***To update the table of contents:***

* ***click and highlight the table;***
* ***press “f9” key; and***
* ***in the “update table of contents” box select “update entire table”***

***Remember to account for any and all movement of pages.]***

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CONDITIONS OF TENDERING

***[User Instruction: Include the Conditions of Tendering without alteration except for sections to be deleted where indicated by a user instruction.]***

1. Description of the Services

[*User instruction: include a short description of the services to be carried out under the contract.]*

1. Contact person

Refer requests for information about the Tender to:

*[User Instruction: insert the name and contact details of the person best able to answer* [*User instruction: Ensure that the person has a copy of the RFT documents and will be available for the duration of the Tender period.]*

|  |  |
| --- | --- |
| Name: |  |
| Telephone number: |  |
| Email address: |  |

1. NSW Government Supplier Code of Conduct
   1. Tenderers must comply with the **NSW** Government supplier code of conduct which is available at [www.buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct](http://www.buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct).
   2. The Code is a statement of ethics. It imposes behavioural obligations on people involved in tendering processes, including calling, reviewing and accepting tenders.
   3. Lodgement of a tender is evidence of the tenderer’s agreement to comply with the Code for the duration of any contract awarded as a result of the tender process. If a Tenderer fails to comply with the Code, the Principal may take the failure into account when considering this or any subsequent tender from the Tenderer and may pass over such tender.
2. Government Policies

**Dealing with Modern Slavery**

* 1. Tenderers must demonstrate that they understand Modern Slavery and will implement processes and procedures to identify and manage the risks of Modern Slavery.
  2. Submit with the Tender the completed Tender Schedules - **Schedule of Compliance for Dealing with Modern Slavery.**

**Aboriginal Participation**

***[User Instruction: Only include the above subheading and the following paragraphs:***

* ***for all contracts with an estimated value greater than $7.5M; and***
* ***for contracts valued at up to $7.5M where the responsible agency requires the Service Provider to meet specified targets for aboriginal participation.***

***Delete this clause and the above heading if not required.***

***If this clause is deleted, also:***

* ***delete Tender Schedule of aboriginal participation information***
* ***delete general conditions of agreement clause – aboriginal participation and conditions of agreement annexure - aboriginal participation***

***Guide notes: It is NSW Government policy to create opportunities for Aboriginal businesses and encourage the employment and training of Aboriginal business through the supply chain of NSW Government contracts. The revised Aboriginal Procurement Policy (APP) applies to the procurement of goods and services and construction by NSW government agencies from 1 January 2021. The APP incorporates the previous aboriginal participation in construction policy.***

***The Parliament of NSW and local councils are not covered by this policy. State owned corporations may choose to adopt the policy in full or in part where it is consistent with their corporate intent.***

***Agencies must include minimum requirements for aboriginal participation in all contracts valued at $7.5 million. The minimum requirement is based on 1.5% of the contract value (less exclusions) being directed to aboriginal participation.***

***Agencies can consider appropriate exclusions which may include expenditure unrelated to design with very limited opportunities for aboriginal participation.***

***Agencies may also increase the aboriginal participation percentage to higher than 1.5%, if this is considered appropriate for the particular contract. If this applies amend all references to 1.5% in the relevant clauses.***

***The contract value less the value of exclusions is the ‘app contract value’ and is to be confirmed by the principal at contract award.***

***Refer to section 3 of Schedule (NSW Government Aboriginal Procurement Policy) to the Infrastructure Advisory Professional Services Contract – Long Form for more details.]***

* 1. The tenderer’s attention is drawn to the requirements of the NSW Government *Aboriginal Procurement Policy (APP).* The policy document is available from buy.nsw website *at* <https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy>
  2. Refer to section 3 of Schedule 2 (NSW Government Aboriginal Procurement Policy) to the Infrastructure Advisory Professional Services Contract (Long Form).
  3. The Principal will consider the demonstrated capacity of Tenderers to meet obligations under the Policy and the extent to which the tenderer’s proposed Service Delivery Plan will meet the minimum Aboriginal participation requirements when evaluating the tenders.
  4. Submit the completed Schedule and the information required by Tender Schedules - **Schedule of Aboriginal Participation Information.** The Principal may exclude a tender from further consideration if the tenderer does not submit a complying Schedule. Where a Tenderer has no or very limited past experience with Aboriginal Participation in Construction, its response will be assessed on its understanding of practical steps to improve Aboriginal participation and the detail of its proposed Aboriginal Participation Plan.

1. Goods and Services Tax
   1. Fees, rates and other amounts in this Tender must include GST if it is payable.
2. Submission of Tender

***[User Instruction: Agencies are expected to use the etendering system where possible. An agency may establish an etendering site, or make arrangements to use the etendering site, by contacting the NSW Procurement Service Centre on 1800 679 289 or through: NSWbuy@treasury.nsw.gov.au]***

**Documents to be submitted**

* 1. The following documents must be completed and/or submitted by the Tenderer:
     1. Tender Form;
     2. Tender Schedules;
     3. Information called for in the Tender Schedules; and
     4. ***[User Instruction: List any other returnable documents. If none, remove this instruction.]***
  2. Submit all information identified in the RFT documents as being required with the Tender.
  3. **[*User instruction: delete the following paragraph where clause 10 (alternative tenders) does not allow alternative tenders.*]** Where any alternative Tender is offered, submit alternative Tender Schedules and associated information describing where the alternative Tender(s) differ from the conforming Tender. Identify in each schedule the alternative to which it applies.
  4. Where Addenda have been received, refer to each one on the Tender Form to confirm that the Tender allows for the instructions it contains.
  5. [*User Instruction: Delete the following paragraph if not applicable.*] General information about your firm, such as brochures and the firm's history, is not required with the Tender.

**Submission procedure**

* 1. Submit the Tender Form, Tender Schedules marked ‘Submit with Tender Form’ and other required documents or information by the date and time given in the advertisement or invitation.
  2. If more than one Tender submission is made, mark each submission clearly as to whether it is a copy, an alternative tender, or whether the submission supersedes another submission.
  3. Submit when requested, by the date, time and method stipulated in the request, Tender Schedules marked ‘Submit when requested’ and any other information requested by the Principal to allow further consideration of the Tender.
  4. Failure to meet these requirements may result in the Tender not being considered.
  5. Any Tender that is not received in full at close of Tenders may not be considered.

**Two-Envelope System**

***[User Instruction: Delete this subclause and the above subheading when the two envelope system will not be used. Use the two-envelope system when the Tender evaluation involves scored and weighted non-price criteria.]***

* 1. This RFT process is being managed under the two-envelope system. The Tender must be submitted in two separate files. The first file is for Tender Schedules and other documents containing non-price information. The second file is for the Tender Form and other Tender Schedules containing price information. Each file must have a cover sheet with the appropriate identifier:

1. “Tender for - Envelope 1: Non-price information” (**Envelope 1**)
2. “Tender for - Envelope 2: Price information” (**Envelope 2**)
   1. Each separate file may be more than one file zipped and named appropriately. The separate files may be lodged together or in separate actions.

**Electronic Format for submissions**

* 1. Tenders submitted electronically must be in a file format that can be read, formatted, displayed and printed by a current version of Microsoft Word, or any format required by the RFT.
  2. The Principal may decline to consider for acceptance Tenders that cannot be effectively evaluated because they are incomplete or corrupt.
  3. **[*User Instruction: use the following paragraph if applicable where cad files must be submitted, otherwise delete.*]** Any CAD files submitted with an electronically lodged Tender must be in DGN, DWG, or DXF format. The Principal uses Microstation and tenderers must ensure that any CAD files submitted will correctly display and print in Microstation.
  4. [***User Instruction: insert any specific file requirements, otherwise delete.***]

**File Compression**

* 1. Tenderers may compress electronic tenders in any format that can be decompressed by winzip. Tenderers must not submit self-extracting (\*.exe) zip files.

Text in Tender Forms

* 1. Tenderers must not change existing text in electronic Tender Forms other than to insert required information.

eTendering

* 1. Unless alternative arrangements have been agreed in writing before Tenders are due to close, Tenders must be lodged through the NSW Government eTendering website at: <https://tenders.nsw.gov.au>.
  2. 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.

**Legal Status**

* 1. Tenders submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW). Lodgement of a Tender electronically is evidence of the Tenderer’s acceptance of these Conditions of Tendering and of any conditions shown on the eTendering website.
  2. It is the responsibility of the tenderer to ensure that the Tender is lodged by a person authorised by the Tenderer.

1. Late Tenders
   1. Late Tenders will not be accepted, except where the integrity and competitiveness of the tendering process will not be compromised.
2. Alternative Tenders

***[User Instruction: Select either option 1, 2 or 3 below and delete the two options not selected.***

* ***Option 1 does not allow any alternative tender.***
* ***Option 2 allows the Tenderer to submit an alternative tender, provided a fully compliant Tender for the Services specified in the contract is also submitted.***
* ***Option 3 allows the Tenderer to submit a non-complying Tender without submitting a fully compliant one.]***

***[Option 1]***

Submit a Tender in full compliance with the specified requirements, without any conditions or qualifications.

***[Option 2]***

You must submit a Tender that fully complies with the specified requirements, without any conditions or qualifications. You may also submit alternative Tenders. For any alternative Tender, you must fully describe and price any applicable conditions, qualifications, or departures from the specified requirements.

***[Option 3]***

Submit one or more Tenders for the Services. You must fully describe and price any applicable conditions, qualifications or departures from the specified requirements.

Nominated Alternative Tenders

***[User Instruction: delete this subclause and the above heading if nominated alternative tenders are not required..***

***Insert a list of nominated alternative tenders where these are sought, e.g. for alternative completion times. You should seek alternative tenders from Tenderers who are seeking to retain ownership of intellectual property rights in contact materials***

* ***When alternative tenders are nominated, describe and specify relevant details, such as:***
* ***The information to be submitted with an alternative tender;***
* ***Technical or other references in the briefing documents; and/or***
* ***The tenderer's obligation to detail, the effect of an alternative tender.]***

1. Evaluation of Tenders

***[User Instruction: Include the following paragraph if part of the Services may be awarded separately. Follow this with a list of engagements that may be separately awarded, otherwise delete.]***

* 1. Tenderers may not be accepted exclusively for the Services and the Principal may engage multiple Tenderers for specific parts of the Services. Tenders may be accepted for the whole of the Services or specific parts as follows: [insert]
  2. Tenders will be assessed against the evaluation criteria set out below. The criteria for evaluating the Tenders are:
     1. Non-price

***[User Instruction: Insert the non-price criteria to be used in the Tender evaluation.]***

*[User instruction: insert the criteria and subcriteria and the relative weightings of the price and the non-price criteria as a whole. Do not show the weightings for individual subcriteria. For example:*

*For a price only evaluation:*

* *Price* 
  + *Fee*
  + *Expenses*
  + *Rates for variations*

*Or, for an evaluation involving scored and weighted non-price criteria:*

* *Price* 
  + *Fee*
  + *Expenses*
  + *Rates for variations*
* *Non-price* 
  + *Demonstrated experience in similar engagements*
  + *Understanding of the services*
  + *Clear and effective methodology*
  + *Suitability of key personnel*
  + *Quality of previous experience and associated references*
  + *Proposed measures to ensure environmental sustainability’*

*See procurement practice guide* [Tender planning for consultancy services engagements](https://www.procurepoint.nsw.gov.au/documents/consultancy-services-tender-planning-engagements.docx) *for guidance on criteria weightings.]*

* + 1. Price

- Fee

- Expenses

***[User Instruction: Delete “Rates for Variations” If not requested in the Tender Schedules.***

- Rates for variations

***[User Instruction: Delete the following information relating to non-price criteria if the evaluation will not involve scored and weighted non-price criteria.***

***See Procurement Practice Guide*** [**Tender planning for consultancy services engagements**](https://www.procurepoint.nsw.gov.au/documents/consultancy-services-tender-planning-engagements.docx) ***for guidance on selecting appropriate criteria.***

***Insert the percentage weighting for the price criteria.]***

* 1. The evaluation of non-price criteria will be based on information provided in the Tenders.
  2. Tenders considered unsatisfactory for any of the non-price criteria may not be considered further.
  3. The Principal may also take into consideration factors including, but not limited to: whole of life costs; ability to meet requirements of the NSW Government Supplier Code of Conduct innovation; delivery time; quality offered; previous performance; experience; capability; work health and safety performance; environmental management performance; community relations; value adding; and conformity.
  4. [***User Instruction: Include the following paragraph when the engagement involves design or design management, otherwise delete. Note that for any engagement with a Fee exceeding $50,000 where there is no prequalified panel, you must make every effort to invite Tenderers who have certified quality management systems. Only when this is impractical, or regional/local consultants may be suitable, can you include Tenderers who do not have certified quality management systems.***]Tenderers with a Quality Management System certified as meeting the requirements of AS/NZS ISO 9001 receive a 10% price preference over those without such a certified Quality Management System.

1. principal’s rights
   1. The Principal reserves the right in its absolute discretion to discontinue, cancel or amend the RFT process at any point, without making a determination regarding acceptance or rejection of Tenders or issue Addenda to the RFT (including to modify or clarify the RFT).
   2. The Principal will not be liable for any losses suffered by any Tenderer as a result of discontinuance of the tender process, including costs of tendering.
2. outcome of evaluation
   1. The Principal may accept Tenders that do not conform strictly with all requirements of the RFT documents.
   2. The Principal is not bound to accept the lowest or any Tender. Tenders which do not comply with any requirement of, or which contain conditions or qualifications not required or allowed by, the Tender may be excluded from consideration.
   3. 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. No Tender, or qualification or departure from the RFT documents, is accepted unless and until the Principal gives an acceptance or agreement in writing.
   4. If the Principal determines, in its absolute discretion, to select on or more preferred Tenderer, all Tenderers will be notified in writing of the outcome of their Tenders.
3. Acceptable Legal Entities
   1. The Principal contracts only with recognised and acceptable legal entities with appropriate financial assets and current professional indemnity insurance cover. Tenders will not be considered from entities such as business names.
   2. Tenderers may be required to provide evidence of their legal entity by submitting a copy of an official document, such as:
      1. company registration and names of office bearers issued by the Australian Securities and Investments Commission; or
      2. a statement confirming the legal entity signed by a practicing solicitor.

If requested to do this, submit the information within three working days after receiving the request.

1. Financial Capacity

***[User instruction: delete this clause and the above heading unless:***

* ***The contract is for a long term; and***
* ***There is concern that a Tenderer likely to be in contention may not be either prequalified under a NSW Government consultant prequalification scheme or known by the responsible agency to be suitable; and***
* ***A manager with the appropriate authority has given approval to include the clause.]***
  1. Tenderers must have sufficient financial capacity to perform the services required under the contract.
  2. If requested to do so, the tenderer must provide a statement from a qualified accountant certifying that the tenderer has met:
     1. all of its statutory obligations including payment of pay as you go (**PAYG**) taxation instalments, PAYG withholding tax, GST Business Activity Statements, Superannuation Guarantee payments and payroll tax, if applicable; and
     2. other obligations including payment of rentals and interest, as well as payment of subcontractors, subconsultants and suppliers within acceptable business credit periods.
  3. Tenderers do not need to provide financial statements.

1. Quality Management System

***[User Instruction: Consider deleting this clause and above heading if the estimated fee is less than $250,0000, and the services are deemed low risk . Prequalification schemes SCM1191 & SCM10611 require certified quality management systems for consultants in the above $250,000 fee categories.]***

The Tenderer must have in place a Quality Management System certified to AS/NZS ISO 9001 or demonstrate that equivalent QMS systems are in place.

1. Work Health and Safety Management System

***[User Instruction: If sourcing from scheme SCM1191, only include this clause and above heading if using the following work categories:***

* ***Independent Safety Assessor (Work Category 406)***
* ***Occupational hygienists (Work Category 402)***
* ***Project Manager Planning & Delivery – Health Infrastructure (Work Category 336)***
* ***Project Management (Work Category 313)***

***If sourcing from scheme SCM10611, only include this clause and above heading if using the following work categories of consultants in construction prequalification scheme SCM10611:***

* ***Project Manager Planning & Delivery – Health Infrastructure***
* ***Project Management.]***

The tenderer must have in place:

* + 1. Work Health and Safety Management System accreditation to ISO 45001 (or AS 4801 until 13 July 2023); or
    2. Staff having relevant qualifications in managing safety with a Certificate 4 (C4) in Work Health and Safety or above such as a diploma; or
    3. Two written examples of second party audit reports where the Consultant has satisfactorily overseen implementation of a Work Health and Safety system on a construction project**.**

1. SubConsultants

For each subconsultant service listed below, nominate in the Outline Services Delivery Plan the subconsultant you propose to carry out the Services.

***[User Instruction: List the relevant subconsultant packages.]***

|  |
| --- |
| **Subconsultant service** |
|  |
|  |

1. Disclosure of Contract Information
   1. Details of this Tender and the contract awarded as a result of this Tender process must be disclosed in accordance with the *Government Information (Public Access) Act 2009* (NSW).
2. Confidential Information
   1. The contents in this RFT (including any attachments) contain confidential information of the Principal and must only be used by the Tenderer for the purpose of preparing the Tender. The Tenderer must not disclose the contents of this RFT (including any attachments) to any third party without the Principal's prior consent, unless required to do so by law.
3. service provider’s Performance
   1. By submitting a Tender, the Tenderer authorises the Principal to gather, assess and communicate to NSW Government agencies or local government authorities information about the Tenderer’s financial position and the Tenderer’s performance in respect of any contract awarded as a result of this Tender process. Such information may be used in considering whether to offer the Tenderer future tendering opportunities
   2. During the term of the contract, the Service Provider’s performance will be monitored. Unsatisfactory performance is taken into account when considering future tendering opportunities for the provision of services to NSW Government agencies.
4. Multiple Use of Contract Material

The contract material produced under the contract may be adapted or changed by the Principal for the purpose of constructing similar facilities on the same or a different site. Refer to **Intellectual Property Rights** at clause 3 of the contract.

1. Novation

***[User Instruction: Include the following where the Principal will novate the Service Provider to a contractor who will be engaged on a design development and construct (DD&C) or design and construct (D&C) contract. This section only applies if you are using the Infrastructure Advisory Services – Long Form Contract. If you are using the short form contract and require this clause, consult with your Legal team. If this applies, you will need to select ‘applicable’ in item 23 of the Key Contract Terms in the Long Form contract.]***

* 1. The Principal intends to novate the obligations and liabilities in connection with this contract (the "Novation Contract") to the successful Tenderer and Contractor for <contract no and name> (the "Head Contract").
  2. The Principal intends that the novation will occur at the Date of Contract for the Head Contract.
  3. The Principal may take into account information relating to the Tenderer’s performance with respect to cooperation in considering the award of the contract.
  4. The novation will be on the basis detailed in clause 15.8(c) of the contract.

***[User Instruction: normally Tenders for contracts to be novated should not be called until the list of Tenderers for the Head Contract is established. Normally use Option 1.***

***Otherwise, if the list of Tenderers for the Head Contract has not been established, use Option 2. In this case, be mindful that Tenderers may allow extra for being required to work with an unknown head contractor.]***

* 1. [***Option 1***] The following Tenderers may be invited to Tender on the Head Contract

|  |  |
| --- | --- |
| 1. |  |
| 2. |  |
| 3. |  |

***[Option 2]*** The Principal will advise the successful Tenderer for this contract (the "**Novation Consultant**") of the tenderers for the Head Contract once the final list of Tenderers has been established.

***[User Instruction: use for both option 1 and option 2]***

* 1. The “Novation Consultant” (the successful Tenderer for this contract) must assist all the identified Tenderers for the Head Contract to become familiar with all aspects of the work under the Novation Contract, including, but not limited to, any design requirements, and execute a Novation Deed as shown in Schedule 12 to the contract with each Tenderer.
  2. The Head Contract Tenderers must submit the partially executed Novation Deeds with their Tenders for the Head Contract. Following award of the Head Contract, the Principal intends to execute the Novation Deed between the selected Head Contractor and the Novation Consultant.

1. Other Matters

***[User Instruction: Include in this section any other conditions that may apply to Tenderers. for example:***

* ***pre-Tender meetings and briefings***
* ***pre-Tender site visits***
* ***preferred subconsultants***
* ***early Tenderer involvement***

***If none, then delete the heading and the prompt below.]***

1. no legal relationship or obligation

23.1 Nothing in this RFT will oblige the Principal to proceed to enter into a binding contract with a Tenderer as contemplated in this RFT or at all. No binding contract whatsoever will be taken to have been entered into in respect of the Project unless and until such time as a contract relating to the Project has been executed between the Principal and the successful Tenderer.

1. disclaimer

24.1 Unless expressly stated otherwise in the RFT, the Principal gives no warranty nor makes any representation as to the currency, reliability or completeness of the information contained in the RFT. The Principal will not be liable to a Tenderer if the Tenderer or its Tender relies on any information or data in the RFT documents or any other information provided to or received by the Tenderer from any person (including from the Principal or a person in its behalf) in connection with the RFT process.

1. Defined terms

**"Addenda"** means one or more adjustments to this RFT issued by the NSW Government from time to time.

**"Conditions of Tendering"** means these conditions of tendering (sections 1-22).

**"Outline Services Delivery Plan"** means the outline services delivery plan submitted by a Tenderer in response to this RFT.

**"Principal"** means the NSW Government agency that has issued this the RFT and will be the intended Principal under the contract the subject of this RFT.

**"RFT"** means this invitation to the Tenderer to submit a Tender in accordance with the Conditions of Tendering.

**"Services"** means the services to be provided under contract the subject of this RFT.

**"Tender"** means a proposal submitted by a Tenderer in response to this RFT.

**"Tenderer"** means an entity or person that is invited to submit a Tender in response to this RFT.

**"Tender Form"** means the tender form attached to this RFT.

**"Tender Schedules"** means the tender schedules attached to this RFT.