

# Request Conditions



## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions Generally

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

**Contact Person** means the person named as such in Part 1 of the Request or any replacement person notified to Respondents.

**Contract** means the final agreement between the Principal and Contractor for the execution of the Requirement including any documents referenced therein.

**Contractor** means the person or persons, corporation or corporations whose Offer is accepted by the Principal, and includes the executors or administrators, successors and assignments of such person or persons, corporation or corporations.

**Deadline** means the date stipulated in Part 1 of the Request, by which Offers must be lodged with the Principal.

**General Conditions** means the General Conditions of Contract stipulated in the Request.

**Offer** means the Respondent's Offer to be selected to supply the Requirements (and any agreed amendments).

**Offer Validity Period** means the period specified in Part 1 of the Request.

**Offered Price** means the price, or the price determined by applying the formula or method, specified in the Offer.

**Principal** means the Shire of Augusta Margaret River, ABN 13 643 296 019.

**Purchase Order** means a purchase order number or purchase order document issued by the Principal to the Contractor requiring the supply of the Requirement(s) under the Contract.

**Region** means the entire geographical area encompassed within the boundaries of the Shire of Augusta Margaret River.

**Request** means the Request for Quotation document.

**Response or Submission** means the documents submitted by the Respondent in response to the Request, incorporating Offer Form, response to selection criteria and any other attachments and/or schedules.

**Respondent** means any person who submits, or intends to submit, an Offer.

**Request Conditions** means the Request Conditions in this document.

### 1.2 Interpretation

In the Request and these Request Conditions:

- words defined in the General Conditions of Contract also apply to these Request Conditions;  
and
- unless the context otherwise requires:
  - a) the singular includes the plural and vice versa

- b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- c) a reference to a gender includes other genders;
- d) a reference to a person includes a Public Authority, a public body, a company and an incorporated or unincorporated association or body of persons;
- e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;
- f) if the Respondent consists of a partnership or joint venture, then:
  - (i) an obligation imposed on the Respondent under the Request, binds each person who comprises the Respondent jointly and severally;
  - (ii) each person who comprises the Respondent agrees to do all things necessary to enable the obligations imposed on the Respondent under the Request to be undertaken; and
  - (iii) the act of one person who comprises the Respondent binds the other persons who comprise the Respondent
- g) an agreement, representation or warranty on the part of or in favour of two (2) or more persons binds, or is for the benefit of, them jointly and severally;
- h) a reference to the Request or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the Principal or the Respondent;
- i) a reference to a clause, schedule, attachment or appendix is a reference to a clause, schedule, attachment or appendix to the Request
- j) all the provisions in any schedule, attachment or appendix to the Request are incorporated in, and form part of, the Request and bind the Principal and Respondent;
- k) headings are included for convenience and do not affect the interpretation of the Request;
- l) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, reenactments or replacements of it;
- m) no rule of interpretation is to be applied to disadvantage the Principal or Respondent on the basis that it was responsible for preparing the Request;
- n) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- o) if the word 'including' or 'includes' is used, the words 'without limitation' are taken to immediately follow;
- p) a reference to writing includes any means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;
- q) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- r) a reference to a day is to a calendar day, a month is to a calendar month, and a year is to a calendar year;
- s) if a period of time is specified and dates from a given day or the day of an act or event, is it to be calculated inclusive of that day;
- t) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, by the next Business Day;
- u) a reference to a monetary amount means that amount in Australian currency; and
- v) a reference to time means the time observed by the general community from time to time in Western Australia;
- w) where the context permits or requires reference to the Contractor includes the Contractor's Personnel; and
- x) where the context permits or requires reference to the Principal includes the Principal's Personnel.

## 2. CONDITIONS

### 2.1 Confidentiality of Request

The Request is the property of the Principal. The information contained in the Request is commercially confidential to the Principal and shall not, therefore, be copied or disclosed to any other third party without the written consent of the Principal.

The information contained in the Request shall only be disclosed to those of the Respondent's employees and sub-contractor(s) who are directly involved with preparing the Response to this Request.

### 2.2 Submission of Offer

A Response which:

- (a) is not submitted before the Deadline;
- (b) is incomplete at the Deadline; or
- (c) is not submitted in accordance with the provisions of Part 1 of the Request,

may be excluded from consideration.

It is the Respondent's responsibility to allow sufficient time to ensure that their Response has been successfully lodged by the Deadline and to follow up that the Principal has received all documents.

### 2.3 Cancellation and Variation

The Principal reserves the right, at any time and from time to time, to cancel, vary, supplement, supersede or replace the Request or any part of the Request.

In the Principal cancels, varies, supplements, supersedes or replaces the Request, then:

- (a) the Principal will advise each Respondent that the Request has been cancelled, varied, supplemented, superseded or replaced; and
- (b) the Respondent shall not have any recourse against the Principal whatsoever including for claims for any costs or expenses incurred up to and including the date that the Request or any part of the Request is cancelled, varied, supplemented, superseded or replaced.

### 2.4 Principal's Policies and Guidance That May Affect Selection

The following policies and guidance may affect selection of the preferred Respondent(s):

- CCSP 8 Regional Price Preference Policy (November 2018)
- CCSP 9 Purchasing Policy (June 2020)
- CCSP 24 Occupational Safety and Health Policy (May 2017)
- Statement of Purchasing Ethics (April 2016)
- Shire of Augusta Margaret River – Terms and Conditions of Purchase (September 2014) (relevance to the Purchase Order).

Copies of the above are available on the Principal's website: <http://www.amrshire.wa.gov.au/>

### 2.5 Fostering Sustainable Local Economic Growth

The Principal is committed to ensuring support for local business development in all purchasing. The Principal through its procurement policies and procedures, where possible, encourages the use of suppliers, goods, services and staff sourced from within the Region. Responses submitted

in response to this Request are required to demonstrate a regard for the local economy and a supply chain that supports local business development where possible.

## 2.6 Disclosure Of Subcontracting

Respondents must indicate if they intend any person (or organisation) who is not an employee to perform work, services or provide goods, and must provide their details within their Response.

The Contract with the successful Respondent will require the Principal's prior written approval for any changes to these arrangements, and any further subcontracting.

## 2.7 Principal's Rights

The Principal is not obliged to accept the Offer containing the lowest Offered Price.

If the Respondent's Offer makes reference to information on its website, or on any other website, the Principal will not take into account that information when evaluating an Offer.

Unless explicitly stated in the Request, Respondents may submit an Offer for all or part of the Requirements, and may be accepted by the Principal either wholly or in part.

The Principal is under no obligation to accept any Offer and may reject any Offer or all Offers.

After the Deadline, the Principal may:

- (a) request additional information from the Respondent in relation to the content of the Offer for the sole purpose of clarifying the Offer; and
- (b) request information from the Respondent regarding the financial capacity of the Respondent, and if so requested, the Respondent must promptly provide such information to the Principal.

In evaluating a Response, the Principal may take into account any information regarding the Respondent that the Principal has in its possession or received from any source, including information about the past or current performance of the Respondent under any other contract, arrangement or dealing between the Respondent and the Principal.

The Principal reserves the right to conduct site visits as it deems appropriate.

## 2.8 Ownership of Responses

All documents, materials, articles and information submitted by a Respondent as part of their Response will become upon submission the absolute property of the Principal and will not be returned to the Respondent at the conclusion of the Request process *provided* that the Respondent be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided by the Contract.

## 2.9 Risk Assessment

The Principal may have access to and give consideration to:

- a) any risk assessment undertaken by any credit rating agency;
- b) any financial analytical assessment undertaken by any agency; and
- c) any information produced by the financial institution or accountant of a Respondent;

so as to assess that Submission and may consider such materials as tools in the Response assessment process.

The Principal reserves the right to engage (at its own cost) an independent financial assessor as a nominated agent to conduct financial assessments under conditions of strict confidentiality. For this

assessment to be completed, a representative from the nominated agent may contact Respondents concerning the financial information that the Respondent is required to provide.

The financial assessment is specifically for use by the Principal for the purpose of assessing Responses and will be treated as strictly confidential.

## 2.10 Selection of Preferred Respondent

The Principal may select, but is not obliged to select, one or more Respondents as a preferred Respondent.

Selection as a preferred Respondent does not confer any rights on a preferred Respondent and these Request Conditions continue to apply until such time as a Contract is awarded or the Request is terminated.

The Respondent agrees that, if it is selected as a preferred Respondent, then:

- (a) its Offer will remain open for acceptance by the Principal at any time prior to the expiry of the Offer Validity Period;
- (b) the Principal may choose to negotiate any aspect of the Offer; and
- (c) the Principal may request the Respondent to provide a performance guarantee, bank guarantee or some other form of security on terms and conditions acceptable to the Principal.

At any time during the negotiations either the Principal or preferred Respondent may terminate the negotiations for any reason.

If the Principal does terminate negotiations, the Principal may:

- (a) accept the Respondent's original Offer; or
- (b) select and then negotiate with any other Respondent as a preferred Respondent in accordance with this clause; or
- (c) terminate the Request.

## 2.11 Discretion

Whenever the consent of the Principal is required under the Request, that consent may be given or withheld by the Principal in the Principal's absolute discretion, and may be given subject to such conditions as the Principal may determine.

## 2.12 Agreement by Respondent

In submitting an Offer, the Respondent agrees that:

- all information in its Offer and all Offer information is true and correct at the time of its submission;
- other than in respect of information provided by the Principal to the Respondent in writing, it relies entirely on its own enquiries in relation to all matters in respect of the Request, the Request Conditions and the General Conditions;
- it has examined and understood the Request, the Request Conditions, the General Conditions and any other information available to the Respondent in respect of the Request;
- prior to the Deadline, it has examined and understood each Addendum in respect of the Request as by submitting its Offer, it will be deemed to have examined and understood each Addendum;
- it has examined all information relevant to the risks, contingencies and other circumstances having an effect on its Offer which is obtainable by the making of reasonable enquiries, which enquiries the Respondent has made;
- other than in respect of information provided by the Principal to the Respondent in writing, it does not rely on any warranty or representation of the Principal or any person actually or ostensibly acting on behalf of the Principal;

- it must not make reference to any information contained on the Respondent's website or on any other website. Any information from any website which the Respondent wishes the Principal to rely upon must be set out in full in the Respondent's Offer;
- it has not paid or received and will not pay or receive any secret commission in respect of the Request;
- it has not colluded and will not collude with any other person in respect of this Request;
- its Offered Price is not inflated or deflated to advantage another Respondent;
- it has not entered and will not enter into any unlawful arrangement with any other person in respect of the Request;
- it has not sought and will not seek to influence any decision in respect of the Request by improper means; and
- it will pay its own costs and expenses In connection with:
  - (a) the preparation and submission of its Offer; and
  - (b) any discussions, enquiries or negotiations with, or provision or consideration of further information to, the Principal, whether before or after the submission of any Offer,

irrespective of whether its Offer is accepted or not.

#### 2.13 Withdrawal Of Offer

The Respondent may withdraw its Offer at any time prior to acceptance of its Offer, by notifying the Principal in writing.

#### 2.14 Offer Validity

Unless the Respondent withdraws its Offer under clause 2.13, the Respondent agrees that its Offer will remain open for acceptance by the Principal for the Offer Validity Period.

The Offer Validity Period may be extended or further extended by the Principal by advising each Respondent in writing at any time or times.

#### 2.15 Disclosure of Offer Information

- (a) The Respondent agrees and acknowledges that its Offer and its Offer Information are subject to the Freedom of Information Act 1992 (WA) and may also be disclosed by the Principal under a court order or if otherwise required by law.
- (b) By submitting an Offer, the Respondent releases the Principal from all liability whatsoever for any loss, injury, damage, liability, costs or expenses resulting from the disclosure of its Submission under this clause by the Principal.
- (c) Subject to this clause, the Principal will not make public any part of the Submission that the Respondent expressly and reasonably nominates in its Offer as confidential. However, the Principal may require the Respondent to withdraw any claim to confidentiality in respect of any part of the Offer or any Offer Information as a condition of acceptance of the Offer.

#### 2.16 Precedence of Documents

In the event of there being any conflict or inconsistency between the terms and conditions in the Request and those in the General Conditions of Contract, the terms and conditions appearing in the Request will take precedence.

Furthermore, in the event of there being any conflict or inconsistency between the terms and conditions in the Request and those in the final Contract between the Principal and Contractor, the terms and conditions appearing in the final Contract will take precedence.

#### 2.17 Identity of Respondent

The identity of the Respondent and the Contractor is fundamental to the Principal. The Respondent will be the person, persons, corporation or corporations named as the Respondent in the Offer. Upon acceptance of the Offer, the Respondent will become the Contractor.

#### 2.18 Conflict Of Interest

The Respondent must, prior to any acceptance of its Offer by the Principal, disclose to the Principal any information that is or might be relevant to determining whether an actual, potential or perceived conflict of interest exists or might exist in relation to the Request or the performance of the Contract (if awarded) by the Respondent.

#### 2.19 No Bribe, Inducement Or Offer Of Employment

The Respondent must not, without the prior written consent of the Principal, directly or indirectly approach or communicate with any officer or employee of the Principal having any connection or involvement with the Request, with respect to:

- (a) an offer of employment; or
- (b) availability of employment,

with the Respondent or any related entity.

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

#### 2.20 Canvassing Of Officials

If the Respondent, whether personally or by an agent, canvasses any of the Principal's Commissioners, Councillors or Officers (as the case may be) with a view to influencing the acceptance of any Offer made by it or any other Respondent, then regardless of such canvassing having any influence on the acceptance of such Offer, the Principal may at its absolute discretion omit the Respondent from consideration.

#### 2.21 Agreement With These Request Conditions

In submitting its Offer, the Respondent is deemed to have read and agreed to these Request Conditions.