



Department of Planning and Environment

PART B

Standard Conditions of Tendering

Part B – EOI Standard Conditions of Tendering

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Standard Conditions of Tendering

1. Tender Preparation

'Tender' includes a price, bid, offer, quotation, consultant proposal or expression of interest lodged in response to an invitation or request for tender.

'Services Contract' means the draft contract including the Schedules and Annexures, as shown in PART D.

Before submitting its response to this Expression of Interest (EOI), a tenderer must examine all information relevant to the risks and contingencies and other circumstances having an effect on its tender; and satisfy itself that the tender, including the tender price is correct; and that it is financially and practically viable for it to enter into and perform the proposed Agreement.

2. Interpretation of Terms

Unless a contrary interpretation appears, terms used in this EOI have the same meaning as those given in the attached draft Services Contract (PART D).

3. Legal Entity of Tenderer

Tenders must be submitted by a legal entity or, if a joint tender, by legal entities, with the capacity to contract. The Department will only enter into an Agreement with such legal entity or entities.

The Department may ask a tenderer to provide evidence of its legal status or capacity to contract.

4. Financial Capability of Tenderer

The Department reserves the right to reject any tender if the Department judges the tenderer not to have appropriate financial capability.

The Department will not knowingly accept tenders from or award contracts to tenderers who are bankrupt, are subject to a winding up order, or are corporate entities with persons involved directly or indirectly in the management of the entity who are disqualified under corporations' law.

5. Conflict of Interest

A conflict of interest arises when a tenderer, or a person or organisation associated with the tenderer, is in a position to benefit directly or indirectly from actions of the tenderer through an unfair or unintended imposition or loss on the Department or other party. A conflict of interest can also arise when a tenderer's integrity, objectivity or fairness in performing the services is at risk due to a personal interest or conflicting business arrangements.

Tenderers should disclose in their tenders any potential or actual conflicts of interest that they may have or may be perceived to have in respect of their responsibilities to the State Government and other parties in the course of delivering services to the Department, should they be selected as the successful tenderer.

Identification of a conflict of interest or a perceived conflict of interest will not automatically exclude a tenderer from consideration. The Department reserves the right to assess the potential impact of the conflict or perceived conflict in relation to the tender before a final decision is made. However, the Department's decision about exclusion will be final.

6. ABN Requirements

Normally, tenderers must be registered for GST and state their ABN when they submit a tender.

Tenders from tenderers that do not have an ABN and/or are not registered for GST, such as tenderers commencing business in Australia, may be considered at the Department's discretion if the tenderer demonstrates that it will obtain an ABN and GST registration before entering into an Agreement with the Department. Such tenderers must state how and when they intend to obtain an ABN and register for GST in their tender response.

The Department will not enter into an Agreement with a company that does not have an Australian Business Number and is not registered for GST.

In this tender, 'ABN' means an Australian Business Number as provided in GST law. 'GST' has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

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7. Time and place for lodgement

Responses must be received by the Closing Date and Closing Time specified on the front page of the EOI document.

8. Electronic lodgement of responses

An electronically lodged tender must be lodged in a file format required by the EOI. If a tenderer compresses files, it must be possible to decompress them using WinZip. A tenderer must not submit self-extracting (*.exe) zip files.

Electronically submitted tenders may be made corrupt or incomplete, for example by computer viruses. The Department may decline to consider for acceptance a tender that cannot be effectively evaluated because it is incomplete or corrupt.

To reduce the likelihood of viruses, a tenderer must not include any macros, applets, or executable code or files in a tender response unless specifically requested in the EOI document. A tenderer should ensure that electronically submitted files are free from viruses by checking the files with an up to date anti-virus program before submission.

9. Negotiations before determination of outcome

Before making any determination as to acceptance or rejection of tenders the Department may, at its discretion, elect to conduct limited negotiation with preferred tenderers or a preferred tenderer.

The Department will generally not enter into negotiations on the standard conditions of contract contained in the draft Services Contract (PART D).

10. Evaluation methodology

The objective of the evaluation is to identify the tender(s) that best meet the Department's requirements and represent best value for money for the Department.

Tenders may be evaluated against the criteria set out in the Evaluation Criteria (PART E), which list is not exhaustive. A tender which is rated unsuitable/unsatisfactory against one or more of those criteria may be excluded from further consideration. On the basis of that evaluation, a decision as to what tender(s) represent best value for money for the Department may be made.

The Department may also take into account other considerations such as financial viability (including bankruptcy or insolvency of the tenderer), significant deficiencies in performance of any substantive requirement or obligation under a prior contract, acceptance of the terms of the draft Services Contract and compliance with relevant legislation and policies.

11. Absence of Obligation

No legal or other obligation shall arise between any party and the Department unless and until a formal written contract is executed by the Department and the successful tenderer.

12. Discontinuance of Tender Process

The Department reserves the right to discontinue the tender process at any point, without making a determination regarding acceptance or rejection of tenders.

13. Late responses

Late tenders may be considered, where the Department is satisfied that the integrity and competitiveness of the tendering process has not been compromised and when verifiable circumstances are confirmed by the Department.

The Department shall not penalise any supplier whose tender is received late if the delay is due solely to mishandling by the Department.

14. Conformity of Tenders

The Department seeks conforming tenders.

'Conforming Tender' means a tender that conforms in all material aspects to the Statement of Requirements, the Standard Conditions of, other parts of the EOI document, and is in the prescribed form.

Non-Conforming tenders may be excluded from the tender process without further consideration at the Department's discretion.

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15. Submission of tenders

Prices, responses and other information provided in the tender are to be in writing and in English.

All pricing information provided in the tender must be inclusive of GST. GST must be separately identified in the tendered prices.

Tenderers must complete all sections of the Tender Response form Part C. A tenderer must not change pre-existing text in the EOI other than to insert the required information.

Tenderers should notify the Contact Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in this EOI.

16. Addenda to EOI

'Addendum' means an addition to this EOI made by the Department before Closing Date and Time. If, for any reason the Department, at its sole discretion, requires the EOI to be amended before the Closing Date and Time, an Addendum will be issued. In each case, an Addendum becomes part of the EOI.

The Department, during the tender period may issue Addenda altering the EOI. In such cases, it is the obligation of the tenderer to verify if any Addenda were issued prior to closing date, even if a tender has already been submitted.

17. Tenderer's Tender Costs

The tenderer acknowledges that the Department will not be liable to it for any expenses or costs incurred by it as a result of its participation in this EOI, including where the EOI has been discontinued.

18. EOI evaluation process

Information supplied by the tenderer in Tender Response Form will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all of the evaluation criteria listed in this EOI. Tenders that do not include a fully completed Tender Response Form, in particular those tenders which do not contain sufficient information to permit a proper evaluation to be conducted, or electronic tenders that cannot be effectively evaluated because the file has become corrupt, may be excluded from the tender process without further consideration at the Department's discretion.

19. Extension of the closing date and time

The Department may, in its discretion, extend the Closing Date and Time.

20. Acceptance or Rejection of Tenders

The Department is not bound to accept the lowest tender.

The Department may invite fresh tenders based on the same or different criteria.

21. Debriefing for unsuccessful tenderers

All tenderers will be informed of the outcome of their tender at the conclusion of the tender process.

Unsuccessful tenderers may be offered the opportunity for a debriefing in a manner specified by the Department. Details for arranging the debriefing may be given to tenderers in writing at the conclusion of the tender process.

The Department will not accept or respond to requests for information on the status and progress of the tender evaluation process.

22. Disclosure Information

Following the Department's decision, all tenderers will be notified in writing of the outcome of their Tenders.

23. Clarifications

Any information given to a tenderer to clarify any aspect of this EOI will also be given to all other tenderers if in the Department's opinion the information would unfairly favour the inquiring tenderer over other tenderers.

24. Draft Services Contract

Acceptance of the successful tender will be subject to the execution of a Services Contract between the Department and the successful tenderer.

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The draft Services Contract included with this EOI will be the basis for the final contract between the Department and the successful tenderer.

Where a tenderer does not agree with any conditions of the draft Services Contract, the Department may in its discretion, exclude the tender from further consideration (whether or not the tender has been evaluated against the evaluation criteria) or enter into negotiations with the tenderer regarding the disputed terms, either before or after the tender process has been completed.

The Department reserves the right to make changes to the draft Services Contract before entering into a contract with the successful tenderer. The Department also reserves the right to enter into post-tender contract negotiations with a preferred or successful tenderer.

There is no binding agreement, express or implied in relation to the Services until a contract agreement is executed by both the Department and a tenderer. The final contract will contain the entire agreement between the Department and the successful tenderer.