

## Conditions of Responding

Lodgement of an RFX Response is evidence of the Respondent's agreement to comply with the Terms & Conditions for the duration of any contract awarded as a result of the RFX process. If a Respondent fails to comply with the Council's Terms and Conditions of Responding, the Principal may take the failure into account when considering this or any subsequent RFX Response from the Respondent, and may pass over the RFX Response.

## How to Prepare Your RFX Response

- a) Carefully read all parts of this document.
- b) Ensure you understand the requirements.
- c) Complete and return the Returnable Schedules including all attachments. The submission must be written in English.
- d) Make sure you have signed the Returnable Schedules and responded to all of the Selection Criteria.
- e) Lodge your RFX Response before the Deadline.

## Amendments to the Request/Council Rights

The Respondent must not alter or add to the Request documents unless required by these Conditions of Responding.

Without limiting its rights at law or otherwise, Council reserves the right in its absolute discretion at any time to do one or any combination of the following prior to the closing date by notice to each Respondent:

- a) Defer the closing date or any other date under this RFX; or
- b) Vary, amend, change or modify any aspect of this RFX, in which case Council will issue an addendum to all Respondents correcting any ambiguity or mistake concerning or arising out of this RFX and any such addendum will become part of this RFX;
- c) Prior to or after the closing date, by notice to each Respondent, issue an addendum to all Respondents correcting any ambiguity or mistake concerning or arising out of this RFX and any such addendum will become part of this RFX;
- d) Evaluate RFX Responses as Council sees appropriate in the context of its requirements for the procurement;
- e) Cease to proceed with the process outlined in this RFX or subsequent process;
- f) Accept all or part of a RFX Response;

- g) Reject any RFX Response;
- h) Accept an alternate RFX Response;
- i) Obtain further information from Respondents with respect to its RFX Response for the purposes of clarification or explanation of its RFX Response. This includes holding interviews with some or all Respondents, including any personnel nominated by the Respondent in the RFX.

All RFX Responses lodged will become the property of Council and on no account will they be returned to Respondents. Council is not bound to accept the lowest or any Submission.

### **Clarification of the Request**

If the Respondent has any doubt as to the meaning of any part of this Request or the scope of the work/specification required they should seek to clarify points of doubt or difficulty with the Contact Officer before submitting a RFX Response.

All requests for clarification must be made submitted via the online forum in Vendor Panel in writing and will be directed to the nominated Contact. The Contact Officer will respond in writing distributing both the clarification enquiry and the response to all Respondents.

- a) If a Respondent considers the subject matter of a question to be confidential, it must clearly indicate this in the correspondence. Council, in its sole discretion, shall determine whether the matter raised in the question is of a confidential nature. If Council does not consider the subject matter of the question to be of a confidential nature, it shall give the Respondent the opportunity to withdraw the question.
- b) Council also reserves the right to issue the responses to any questions raised by one Respondent to another Respondent. Council will ensure, however, that information proprietary or confidential to a particular Respondent remains as such.
- c) Council will respond in writing to questions submitted by Respondents as quickly as possible after receipt of the questions, however, the nature and extent of the questions will determine the time frame within which Council will be able to respond.

The Principal reserves the right not to answer requests for clarifying information made within seven days prior to the Deadline. Alternatively, when submitting its RFX Response the Respondent may include a statement of the interpretation upon which it relies and upon which the RFX Response has been prepared.

### **Respondents to inform themselves**

The Information in this Request has been provided in good faith. It is intended only as an explanation of the Principal's requirements and is not intended to form the basis of a

Respondent's decision on whether to enter into any contractual relationship with the Principal.

The Information provided does not purport to be all-inclusive or to contain all information that a prospective contractor may require. Respondents and their advisers must take their own steps to verify information which they use and must make an independent assessment of the opportunity described in this Request after making such investigation and taking such professional advice as they deem necessary.

Respondents will be deemed to have:

- a) examined the Request and any other information available in writing to Respondents for the purpose of responding;
- b) examined all further information relevant to the risks, contingencies, and other circumstances having an effect on its RFX Response which is obtainable by the making of reasonable enquires;
- c) satisfied themselves as to the correctness and sufficiency of its RFX Response including prices which will be deemed to cover the cost of complying with this RFX and of all matters and things necessary for the due and proper performance and completion of the work described therein; and
- d) satisfied themselves they have a full set of the Request documents and all relevant attachments which includes all pages which are numbered consecutively and that all supplements referred to are also included.

None of the Principal, the Principal's members, directors, officers, employees, agents or advisers make any representation or warranty as to the adequacy, accuracy, reasonableness or completeness of the Information.

Neither the Principal nor their professional advisers shall be liable for any loss or damage arising as a result of reliance on the Information nor for any expenses incurred by Respondents at any time.

Any advisers or agents appointed by the Principal, whether legal, financial, technical or other, will not be responsible to anyone other than the Principal for providing advice in connection with the Request.

### **Submission of RFX Responses**

Submit all information called for in the RFX documents.

Where applicable, refer to each Addendum and state that the RFX Response allows for the instructions given in the Addendum.

General information about the Respondent, such as brochures, advertising, product or company information or marketing brochures or presentations other than those expressly

requested, are to be sent with the submission, is not required with the RFX Response unless expressly requested in the RFX Response Schedules. If required the Evaluation Team will request these materials separately.

### **Lodgement of Submissions and Delivery Method**

The RFX Response must be lodged by the closing date and time as stated in the RFX Summary Information page.

Should the Respondent experience any technical difficulties in lodging its RFX Response via the prescribed electronic manner, they are to avail themselves to the technical support provided by the Tendering site

Please note that:

RFX Responses received via electronic transmission other than through the Council's electronic tendering site (including without limitation an e-mail system, facsimile) will not be accepted.

### **eTendering Conditions**

Submissions lodged electronically will be treated in accordance with the *NSW Electronic Transactions Act 2000*, and given no lesser level of confidentiality, probity and attention than RFX Responses lodged by other means.

Respondents electronically lodging a RFX Response must accept conditions shown on the electronic Tendering website which include conditions with regards to file types and file sizes acceptable. Please review the terms and conditions with regards to the eTendering system prior to uploading your RFX response.

Council may not consider RFX responses that cannot be evaluated due to being incomplete or corrupt.

Electronic lodgement must be “fully complete” by closing time. The electronic link will cut off right on closing time and if your submission is not complete, it will be deemed as a late submission and will not be considered.

RFX Responses received via electronic transmission other than through the Council's electronic Tendering site or the expressed electronic format as identified on the cover page (including without limitation an e-mail system, facsimile) will not be accepted.

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 Council's IT environment.

The MS files containing the Schedules provided by Council for completion and return by the Respondent must remain in the version that they were provide in. i.e. not a different version of MS Word, Excel etc.

### **Acceptance of Submissions**

Unless otherwise stated in this Request, Submissions may be for all or part of the requirements and may be accepted by the Principal either wholly or in part. The Principal is not bound to accept the lowest Submissions and may reject any or all RFX Responses and may waive any irregularities therein.

A Submission shall be accepted (and for all purposes shall be deemed to be accepted) when a Council (or delegated authority) resolution has been passed detailing the conditions (if any) of the acceptance of a submission and a subsequent Notice of Acceptance will be provided to the Respondent; or is delivered by prepaid post; or sent by facsimile to the facsimile number given by the Respondent; or sent by email or some other electronic means to the address furnished in the Offer Form. In the latter case, the time of posting shall be deemed to be the time of acceptance.

No legal or other obligation will arise between a Respondent and the Principal in relation to the conduct or outcome of the RFX process unless and until that Council Resolution (or delegated authority decision) has been issued and subsequently the Respondent has received written notification from the Principal of the acceptance of the Submission.

The RFX Response and the acceptance thereof shall constitute a binding contract between the Principal and the Respondent on and subject to the terms of the:

- Formal Instrument of Agreement;
- General Conditions of Contract and any Special Conditions of Contract;
- The Specification; and
- Respondent's Offer Form via the RFX Response Schedules.

### **Rejection of RFX Responses**

A RFX Response will be rejected without consideration of its merits in the event that:

- a) it is not submitted before the closing date and time.
- b) it is not submitted at the place specified in the Request; or
- c) Is not a conforming RFX Response.

### **Late RFX Responses**

If a RFX Response is submitted late via email, the Principal reserves the right to not accept the submission or may consider accept in event where respondent is able to satisfy Principal

that their submission was before the deadline and any technical disruption in submission. Please note that the respondent must be able to provide a report from the prescribed tendering support system to demonstrate their statement.

### **General Evaluation Considerations**

Information provided by the Respondent in its RFX Response to this RFX will be the basis of the evaluation criteria. Respondents are advised to respond clearly to all of the requirements listed.

Those evaluation criteria designated as Mandatory Participation Criteria are evaluation criteria that **MUST** be met by the Respondent. A RFX Response that fails to fully comply with those evaluation criteria may be excluded without further consideration.

Technical and Commercial evaluation criteria are evaluation criteria which will be taken into account by the RFX Evaluation Team when conducting an overall value for money assessment of the RFX Response. Failure to fully comply with those evaluation criteria may reduce the Respondent's overall score but will not result in the exclusion of the RFX Response from further consideration.

Council may, in its sole discretion, seek clarification from any Respondent regarding information contained in the RFX Response and may do so without notification to any other Respondent.

A Respondent may be invited to a one-on-one evaluation conference in order to review and clarify the RFX Response and to enable Council to interview key personnel identified in the RFX Response.

Specifically, the RFX Response will be assessed against the Mandatory Participation Criteria and the Technical and Commercial Evaluation Criteria detailed in this RFX.

The quality and the format of the RFX Response will be taken into account in evaluating the RFX Response.

### **Mandatory Participation Criteria**

If Mandatory Participation Criteria are to be specified they will be detailed in the RFX Response Schedules.

Each Submission will be assessed on a Yes/No basis (in effect, a Pass / Fail scenario) as to whether the compliance criterion is satisfactorily met. An assessment of "No" against any criterion may eliminate the Submission from consideration.

### **Evaluation Criteria**

RFx Responses will be assessed using a weighted scoring process (if stated in this request) based on information provided with the RFx.

### **Financial Capacity**

Respondents must have sufficient financial capacity to perform the services required under the Agreement.

Respondents are to provide financial information if requested. The Response Schedules will be reviewed by the Council nominated representative and / or the Respondent gives consent to the Council to complete a financial risk assessment review by its appointed credit rating agency or representative.

In submitting a RFx Response, the Respondent will be taken to have consented to the Principal accessing this financial viability / risk assessment and information, including any personal information contained therein.

Respondents who are identified as a financial risk as a result of these reviews may, at Council's discretion, be passed over and removed from further participation in the evaluation process.

### **Alternative or Non-Conforming Submissions**

Council reserves the right to accept an Alternative or Non-Conforming RFx Response Submissions.

If a Respondent wishes to submit an Alternative or Non-Conforming RFx Response it must also:

- a) Submit a conforming RFx Response
- b) Submit an unmarked copy of the Alternative or Non-Conforming RFx Response; and
- c) Submit a copy of the non-conforming RFx Response in a marked up form, which identifies all departures from the conforming RFx Response. The detail provided must fully describe and price any conditions, qualifications, or departures from the specification for the Alternative or Non-Conforming RFx Response.

Council may, at its absolute discretion, consider an Alternative or Non-Conforming RFx Response; however it is not obliged to do so.

### **RFx Response Validity Period**

All RFx Responses will remain valid and open for acceptance for a minimum period of ninety (90) days from the closing date and time or forty-five (45) days from the Principal's decision for determining the RFx, whichever is the later unless extended by mutual agreement

between the Principal and the Respondent(s) in writing. Respondents may withdraw their RFX Response at any time after the expiration of the RFX Validity Period.

### **Variation of RFX**

Before the Principal accepts any of the received RFX Responses to Contract, a person who has submitted a RFX Response may, subject to subparagraphs below, vary the RFX Response:

- i. by providing the Principal with further information by way of explanation or clarification, or
- ii. by correcting a mistake or anomaly.

Such a variation may be made either:

- i. at the request of the Principal, or
- ii. with the consent of the Principal at the request of the Respondent, but only if, in the circumstances, it appears reasonable to the Principal to allow the Respondent to provide information or correction.

If a RFX Response is varied in accordance with this paragraph, the Principal will notify in writing all other Respondents that have the same or similar characteristics as the varied RFX Response, and provide them with the opportunity of varying its RFX Responses in a similar way.

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

### **Identity of the Respondent**

The identity of the Respondent and the Contractor is fundamental to Council. The Respondent will be the individual, individuals, corporation or corporations named as the Respondent in whose execution appears on the RFX Offer Form in this RFX.

### **RFX Response Price**

The price(s) outlined in the RFX Response must quote all prices Inclusive of GST.

The price(s) will be what the Council will be required to pay pursuant to the Contract and must include all costs associated with the Contract.

The price should be firm for the duration of the contract.

The Respondent must provide its Australian Business Number (ABN), or, if it does not have an ABN, the reason for not having one.

Payments between Council and the Respondent will be exclusively in Australian dollars (AUD).

### **Conditions of contract**

RFx Responses will be deemed to have been made, on the basis of, and to incorporate the General Conditions of Contract and any Special Conditions of Contract as provided in this RFx.

### **Ownership of RFx Responses**

All documents, materials, articles and information submitted by the Respondent as part of or in support of a RFx Response will become property of the Principal and will not be returned to the Respondent at the conclusion of the RFx process. The Respondent will be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided by the Contract.

The Respondent does not acquire intellectual property rights in the Request documents. Respondents shall not reproduce any of the Request documents in any material form (including photocopying or storage in any medium by electronic means) without the written permission of the Principal other than for use strictly for the purpose of preparing RFx Responses.

### **Registration or licensing of Contractors**

The Respondent shall state in the appropriate RFx Response Schedule, its registration or licence number. The RFx Response may not be considered if the Respondent fails to provide such registration or license number.

### **WHS Obligations**

Lodgement of a RFx Response will itself be an acknowledgement and representation of requirements in relation to WHS, which the Respondent will comply with all relevant legislation and agrees to provide periodic evidence of compliance, and give access to all relevant information to demonstrate compliance for the duration of any contract that may be awarded.

### **Jurisdiction**

The Project, the RFx and the final Contract Documents will be governed by the law of NSW. By lodging a RFx Response the Respondent irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of NSW.

### **Costs of RFX**

Respondents remain responsible for all costs incurred by them in connection with its RFX Response whether before or after the submission date and whether incurred directly by them or their advisers regardless of whether such costs arise as a direct or indirect consequence of amendments made to the Request by the Principal. For the avoidance of doubt, the Principal shall have no liability whatsoever to Respondents for the costs of any negotiations conducted in the event that the Principal decides not to accept any RFX Responses.

### **Canvassing of Officials**

Any Respondent who solicits or attempts to solicit support for its RFX Response or otherwise seeks to influence the outcome of the RFX process by:

- a) offers of any inducement, fee, or reward, to any member or officer of the Principal, or any person acting as an adviser for the Principal; or
- b) canvasses any persons referred to in this document; or
- c) contacting any member or officer of the Principal about the Request or any process relating thereto, except as authorised by this Request including (but without limitation) for the purposes of discussing the possible employment transfer of the Respondent member or officer,

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

### **Confidentiality**

The Principal makes information available on condition that it is treated as confidential by the Respondent and is not disclosed, copied, reproduced, distributed or passed to any other person at any time except for the purpose of enabling a RFX Response to be made, for example by disclosure by a Respondent to its insurers or professional advisers, provided they have each given an undertaking at the time of receipt of the relevant information (and for the benefit of the Principal) to keep such information confidential. Other than specified above, or as required by law, and save insofar as the information is in the public domain, Respondents shall not make any of the Information available to any other parties in any circumstances without the prior written consent of the Principal nor use it for any purpose other than that for which it is intended.

### **Statement of Business Ethics**

Council is committed to the highest standards of honesty, fairness and integrity in all its business dealings. Council'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 Council, and ensuring that the best level of service is provided to the community. Breaches of this Statement may constitute grounds for termination of this contract.

In submitting a RFX Response, the Respondent will be taken to have read and comply with the councils Statement of Business Ethics located on the Dubbo Regional Council Website.

### **Code of Conduct**

Dubbo Regional Council has adopted a Code of Conduct for Councillors, contractors and staff. In submitting a RFX response, the respondent will be taken to have read and comply with the Councils Code of Conduct located on the Dubbo Regional Council Website.

Details can be found at:

<https://www.dubbo.nsw.gov.au/about-council/our-responsibilities/code-of-conduct>

### **Community Support Based Procurement**

Council has implemented *Community Support Based Procurement*.

Details can be found at

<https://www.dubbo.nsw.gov.au/about-council/work-at-council/doingbusiness-with-council>.

### **Disclosure of respondents and contract information**

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

### **Dealing with Modern Slavery**

If requested in the RFX documents respondents must demonstrate that they understand Modern Slavery and will implement processes and procedures to identify and manage the risks of Modern Slavery.

### **Non Collusion**

Any Respondent who:

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

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

### **Publicity**

Respondents must obtain the written approval from the Contact Officer before any disclosures relating to the RFX or the contract are made to the press or in any other public domain. Respondents must not undertake any publicity activities with any part of the media in relation to the RFX or contract without the agreement of the Principal, including agreement on the format and content of any publicity.

### **Respondent to identify conflicts**

Respondents must clearly identify in their RFX response if they have any actual or perceived Conflict of Interest in responding to this RFX, and if so, the manner in which they intend to deal with that conflict.

### **Respondent to notify if conflict arises**

If, at any time, an actual or potential Conflict of Interest arises for any Respondent, that Respondent must immediately notify Council in writing of that Conflict of Interest.

### **Council's rights**

If a Respondent notifies Council of an actual or potential Conflict of Interest or Council becomes aware of the existence of an actual or potential Conflict of Interest, Council may, in its absolute discretion:

- a) enter into discussions to seek to resolve such Conflict of Interest;
- b) cease further consideration of and disregard the RFX Response lodged by that Respondent; and/or
- c) take any other action, as it considers appropriate.

### **Probity Considerations**

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

The Respondent consents to such probity investigations being conducted.

Council will be under no obligation to provide Respondents with details of the results of its probity investigations. Council reserves the right to reject a RFX Response 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.

### **Notification of Probity Breach**

Should any Respondent consider that it is not being accorded fairness in the evaluation process, immediate notice of its complaint must be given in writing to Councils Manager Procurement or the Probity Advisor if listed in the RFX documents.

The notification will set out the alleged failure, the impact upon the Respondent's interests, any relevant background information and the outcome desired.

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

### **END OF CONDITIONS OF RESPONDING**