



PART 1: CONDITIONS OF TENDER

I. Conditions of Tender

1.1 Definitions

Unless the context requires otherwise, the following terms used in this RFT have the meanings ascribed to them as set out below:

Addenda - means any document issued by Council before the Closing Date which contains additional information to be considered as part of the Tender.

Alternative Tender – means a response to this RFT that does not comply with certain requirements of this RFT but would only require minor adjustments to become a Conforming Tender. It includes a Tender covering only some of the Goods and/or Services.

Business Day - means Monday to Friday excluding public holidays in Victoria.

Closing Date/ Closing Time - means the Tender closing date and time for the receipt of Tenders, as set out in Schedule A, Item 2 (as may be updated by the Council and advised to all potential Tenderers in writing).

Conditions of Tender means the terms of these conditions of Tender.

Conflict – means any actual or potential conflict of interest or duty, or any position that a reasonable person would perceive as giving rise to such a conflict.

Confidential Information means:

- a) all information provided to the Tenderer by or on behalf of Council during the Tender Process, except for such information that is already in the public domain by reason other than a breach of these Conditions of Tender by the Tenderer;
- b) all copies, notes, records and all related information generated by the Tenderer based on, incorporating, derived from or arising out of a disclosure by Council of the information or materials referred to above.

Conforming Tender - means a Tender that complies with the requirements of this RFT.

Conditions of Contract - means the contract terms provided in Part 3.

Contract - means the contract between Council and the Successful Tenderer/s.

Contractor - means a person or any other body (whether corporate or otherwise) providing the goods and services and/or works pursuant to the Contract.

Council / GPSC - means Golden Plains Shire Council.

Evaluation Criteria - means the factors which the Council will take into account in any evaluation of Tenders, as included in Schedule A, item 4 (Evaluation Criteria).

Goods and/or Services - means the deliverable(s) which the preferred Tenderer will be required to provide to the Council, as described at a high level on the front cover of the RFT and in more detail in Part 2

(Specifications), once the Conditions of Contract have been agreed between the preferred Tenderer and the Council.

Intellectual Property Rights - includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trade marks, confidential information (including trade secrets and know-how), registered designs, circuit layouts and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Law means any law, including common law, equity, statute, regulations, proclamation, ordinance, by-law, mandatory code of conduct, writ, judgement and any award or other industrial instrument.

Non-Conforming Tender - means a Tender that does not comply with material requirements of this RFT but is not an Alternative Tender.

Period of Contract - means the contract duration

Principal - means Golden Plains Shire Council and /or its representatives

Request for Tender or RFT- means this document inviting Tenderers to submit a Tender to supply the Goods and/or Services on terms based on the Conditions of Contract, including any Addenda.

Responsible/ Nominated Contact Officer - means the person or persons specified in clause 1 of these Conditions of Tender or such other person as Council may from time to time determine.

Specification - means the Specification and statement of requirements contained in the RFT.

Statement of Non-Compliance - means the Statement of Non-Compliance in the format specified in section 2.24 of these Conditions of Tender.

Successful Tenderer means the Tenderer whose Tender Response is accepted by Council as the winning bid.

Superintendent - means GPSC nominated officer/ project manager for the day-to-day operation of the contract.

Tender – means a Tenderer’s response documents in the form as specified in Part 4 (Tender Response Schedules) to provide the Council’s requirements as set out in Part 2 (Specification) - and constituting an offer by the Tenderer to the Council in reply to the RFT, to supply the Goods and/or Services on the terms specified in the Conditions of Contract (subject to any amendments to those terms agreed in writing by the parties, based on changes requested by the Tenderer in its Tender).

Tender Process means the process commenced by the issue of this RFT and concluding upon the notification of the outcome to unsuccessful Tenderers, unless terminated earlier.

Tender Response - means the Tenderers Response to the Request for Tender, including Tender Schedules (tender response form) and which must be completed in accordance with these Conditions of Tender.

Tenderer- means a company, person or entity (including representatives) which submits a Tender pursuant to this RFT; and includes, where the context permits, prospective Tenderers and other recipients of this RFT.

Validity Period - means the time period during which Council may accept a Tender.

Written Representation means any statement, representation or warranty that has been made by the Council in writing either (a) in this RFT or (b) through the tendering process described in this RFT, and that is directed to Tenderers.

1.2 Introduction

Tenderers are encouraged to visit <https://www.goldenplains.vic.gov.au/> to obtain a detailed understanding of the Council.

1.3 Summary of the RFT

The Council is seeking Tenders from appropriately qualified and experienced contractors for the provision of the Goods, Works and/or Services. The Council’s detailed requirements are set out in Part 2 (Specification).

This document sets out the general requirements for the Goods, Works and/or Services and the terms and conditions of submitting a Tender.

1.4 Tender Briefing(s) / Site inspection(s)

If the Council is to hold briefing session(s) / site inspection(s), the location(s), date(s) and time(s) will be specified in Schedule A, Item 1 of this Part 1 (Conditions of Tender). A Tenderer must attend the briefing session if it is specified as 'mandatory'. If a Tenderer fails to attend a mandatory briefing session, the Council, will, unless there are extenuating circumstances, disqualify the Tenderer from further participating in the process.

1.5 Proposed Tender Timetable

Please refer to Schedule A Item 2 of this Part 1 (Conditions of Tender), for the estimated timetable of key events and dates with regards to this Tender Process.

1.6 Tender Closing Time

Tenders shall be received only until precisely 12 Noon in Melbourne, Australia on the Closing Date specified in Schedule A, Item 2.

The Council may, prior to the Tender Closing Time, extend the Time of closing by notice (which may be made by electronic notification through Council's eTender system) to all registered tenderers.

1.7 eTendering Conditions

Tender Search is the electronic tendering system used for the electronic publication of information, including the RFT, online forum for clarification and questions, notifications and addenda, and to accommodate the electronic submission of Tenders.

<https://www.eprocure.com.au/goldenplains/>

Tenderers electronically lodging a Tender must review and accept conditions shown on the electronic Tendering website prior to uploading their Tenders. Electronic lodgement must be fully complete by Closing Time. The electronic link will cease at Closing Time and if your Tender submission is not complete, it will be deemed as a late submission and may not be considered. Similarly, the Council may not consider Tenders that contain corrupt files.

Council will not be responsible for Tenderers technical difficulties. Tenders received via electronic transmission other than through the Council's electronic Tendering site (including without limitation an e-mail system) will not be accepted.

Tenders can be uploaded into the Electronic Tender Box in Microsoft Office or Adobe PDF document format. The size of the uploaded files is limited to a maximum of **100MB**.

A maximum of 5 files per tender can be uploaded to the Electronic Tender Box. OHS and other manuals, must be uploaded as one (1) complete file not separate files.

1.8 How to prepare your Tender

- Carefully read all parts of this document and ensure you understand the requirements. Seek clarification where required, as set out in clause 1.19 below.
- Lodge your fully completed Tender (in the form as specified in Part 4 (Tender Response Schedules) and including any other information required by this RFT) before the Closing Time, ensure you have signed all relevant areas and included the signed Letter of Tender.
- Failure to provide the required information in the required format may render a Tender non-conforming and Council may exercise its rights under clause 1.9/1.11/1.18 (regarding non-conforming tenders and Council rights).

1.9 Tender Response Requirements

In their Tenders, Tenderers must provide:

- all information required by the Tender Response;

- Statement of Non-Compliance where they do not comply with or agree with all of the clauses or conditions in the Specifications and Conditions of Contract;
- details of any special conditions pertaining to the Tender;
- details of how the Tender meets the requirements of the Specifications and the evaluation criteria; and
- any other information required by this Request for Tender.

Failure to provide this information may render a Tender “non-conforming” and Council may exercise its rights under this the Conditions of Tender.

The Tender shall be prepared in accordance with the following requirements:

- Price Basis - All prices quoted shall be in Australian currency.
- Taxes - All prices must be submitted on the basis of the Australian tax legislation as of the date of this RFT.
- Tender Format - Tenderers must prepare and submit their Tender as set out in the Tender Response Form.

1.10 Variation to the RFT

In certain circumstances, the Council may need to do any of the following prior to the Closing Time by giving all potential Tenderers reasonable written notice of such:

- Change, vary or amend any information and/or to issue Addenda to the RFT. Any such Addendum will become part of this RFT;
- Defer the Closing Time or any other date under this RFT;
- Correct any ambiguity or mistake concerning or arising out of this RFT; and/or
- Suspend, terminate or abandon this tendering process.
- Where the Council exercises these rights, it may seek amended Tenders.

Council may issue to each Tenderer Addenda to the Tender Documents at any time and will indicate the closing time for questions and addenda in the Council’s eTender system. This will be at Council’s discretion.

Tenderers must refer to each tender Addenda in their tenders by completing the form supplied in the Part 4 the Tender Response Form.

The Nominated Officer has no authority to make any representation or give any explanation to Tenderers as to the meaning of anything contained in the Tender Documents or anything to be done or not to be done by a Tenderer, other than by written Addenda, and the Tender must not rely on any such representation.

1.11 Council rights Post-Closing Time

In certain circumstances, the Council may need to do one or any combination of the following after the Closing Time:

- Cease to proceed with the process outlined in this RFT;
- Accept all or part of a Tender at the price(s) tendered unless the Tender states specifically to the contrary;
- Reject any Tender;
- Accept one or more Tenders;
- Disqualify any Tender that does not include all the information requested or is not in the format required;
- Accept an Alternative Tender or Non-Conforming Tender (provided that it meets all mandatory Evaluation Criteria); and/or

- Obtain further information from the Tenderer for the purposes of clarification or explanation of its Tender. This includes holding interviews with some or all Tenderers, including any personnel nominated by the Tenderer in the Tender.

All Tenders lodged will become the property of Council and on no account will they be returned to Tenderers.

1.12 Clarification of the RFT

If the Tenderer has any doubt as to the meaning of any part of this RFT it should seek clarification before submitting a Tender.

All requests for clarification must be submitted email through the e tender portal / at least 3 business days prior to the Closing Time. Questions and other correspondence **MUST NOT** be directed to Council officers.

- The Council reserves the right not to answer requests after this period.
- The Council is not obliged to respond to any question or request.

If the question or request is relevant to other prospective Tenderers, the Council will make available to such other prospective Tenderers details of such a question or request together with any response, in which event those details shall form part of this RFT.

If a tenderer believes that its questions or other correspondence may involve disclosure of confidential information, the tenderer shall clearly indicate this in the question or correspondence and indicate why it believes the information to be confidential. The Nominated Officer will then assess the question or correspondence and determine whether the information is confidential, at the Nominated Officer's sole discretion.

If the information is determined to not be confidential, the Council reserves the right to allow the release of the information to other tenderers when providing a response in Council's eTender system or by way of an addendum to the Tender Documents. Alternatively, the Nominated Officer may modify the question or correspondence to remove confidential information prior to posting a response on Council's eTender system or issuing an addendum to the Tender Documents or may otherwise seek to correspond directly with the tenderer submitting the question or other correspondence.

Note that questions and correspondence submitted to the Council's eTender System will not be visible to other tenderers unless and until the Council elects to respond.

The Council reserves the right to amend any questions posted to Council's eTender System to clarify the intent of the questions asked.

1.13 Liability

The Tenderer acknowledges that the Council (including the Council's officers, employees, agents or advisers) will not be bound by any statement, representation or warranty made by, or on behalf of, the Council in relation to the RFT, the tendering process or the subject matter of this RFT, unless that statement, representation or warranty is a Written Representation. Subject to the last two paragraphs in this clause 1.13, if any Written Representation subsequently proves incorrect or incomplete, then the issue will be addressed through change control in the context of any ensuing contract between the Council and the Tenderer (each acting reasonably).

While all due care has been taken in the preparation of this RFT, and while the Tenderer may rely on any Written Representations for the purposes of submitting its Tender, the Tenderer acknowledges that it must not otherwise rely on, and has no separate ability to claim against the Council (or the Council's officers, employees, agents or advisers) in respect of, the adequacy, accuracy, reasonableness or completeness of the information communicated or provided in this RFT or through the tendering process.

To the fullest extent allowed by applicable Law, all statutory or implied warranties are excluded and of no effect and neither the Council, nor the Council's officers, employees, agents or advisers will be liable for any loss, costs, expenses or damage:

- arising as a result of reliance on such information by Tenderer or any other person; or
- otherwise incurred by Tenderers or any other persons at any time, in relation to the tendering process, evaluation of Tender, any contract negotiation or the selection process generally.

If a Tenderer finds any discrepancy, ambiguity, error or inconsistency in the RFT or any other information provided by the Council (other than minor clerical matters), the Tenderer must promptly notify the Council's

Nominated Contact Officer in writing, so that there is fair opportunity to consider what corrective action is necessary (if any).

Any actual discrepancy, ambiguity, error or inconsistency in the RFT or any other information provided by the Council will be corrected by the Council and provided (or the proper information made available) to all Tenderers without attribution to the Tenderer that provided the notice.

1.14 Probity

Council will observe the highest standards of probity in engaging in the Tender Process by complying with Council's Procurement Policy.

1.15 Tenderers to inform themselves

The information in this RFT has been provided in good faith. It is intended only as an explanation of the Council's requirements and is not intended to form the basis of a Tenderer's decision on whether to enter into any contractual relationship with the Council.

By responding to this RFT, the Tenderer will be deemed to have acknowledged and agreed that it has done so on the basis that it has the necessary skills, knowledge and experience to provide the Goods and/or Services. Tenderers will be deemed to have:

- Fully examined and understood the requirements of this RFT (including all documents and attachments referenced) and any other information made available by the Council to Tenderers in relation to this RFT
- Satisfied itself that it has a full set of the RFT documents and all relevant attachments.
- Made its own enquiries and assessed all risks regarding this RFT and the tendering process;
- Not relied upon any warranty or representation (whether oral or in writing or by conduct) made on behalf of the Council except where such warranty or representation is set out in this RFT or made in writing by Council through the processes specified by these Conditions of Tender;
- Ensured that its Tender addresses all the requested information in Part 4 and is presented in the required format, is accurate and complete, and is not misleading in any way;
- Acknowledged that the Council will rely on information provided by the Tenderer at all stages of this tendering process. Any information provided by the preferred Tenderer may (along with this RFT and the Tender itself) form part of the final agreed form of the Conditions of Contract;
- Ensured that it complies with all applicable laws with regard to preparing its Tender (including but not limited to Australian Competition and Consumer Law and Occupational Health and Safety Requirements);
- Met all costs and expenses related to the preparation and lodgement of its Tender, and will meet all of its costs and expenses arising from subsequent negotiation, and any future costs connected with or relating to the tendering process; and
- Satisfied itself as to the correctness and sufficiency of its Tender including tendered prices.

1.16 Variation to the RFT

Council reserves the right to:

- Vary or amend the terms and conditions of this RFT at any time before the Tender Closing Time and shall only do so by giving Tenderers reasonable written notice of such variations via Council eTender system; and
- Suspend, terminate or abandon this RFT at any time during or after the Tender Closing Time by written notice to each Tenderer.

1.17 Changes to the Tender Process

Council may at any time, prior to the Tender Closing Time, by notice through Council's eTender system to Tenderers, change the:

- Tender Closing Time;
- Tender procedure; or
- Scope of works and the Contract outlined in the Tender Documents.

1.18 Closure of Tender

The Tender must be lodged by the Closing Time and by the method as outlined in Schedule A (as may be deferred by Council in its discretion).

Please refer to Part 4 for the list of documents to be completed and submitted by the Tenderer before the Closing Time and also refer to the earlier clause regarding eTendering for requirements applying to electronic submission.

1.19 Acceptance of Tenders

Unless otherwise stated in this RFT, Tenders may be submitted for all or part of the Council's requirements and may be accepted by the Council either wholly or in part.

The Council Is Not Bound To Accept The Lowest Price Or Any Tender (And May Reject Any Or All Tenders).

The Council reserves the right to not accept a Tender (or any part of it) and is under no obligation to give reasons for not accepting a Tender. Tenderers will be informed in writing (*through eProcure*) of the outcome of their Tender at the conclusion of the RFT process. The Council may, in its absolute discretion, invite unsuccessful Tenderers to a de-brief meeting on the outcome of the RFT.

If any Tender is accepted by the Council, such acceptance shall be conditional until both parties signing a contract for the Goods and/or Services, based on the Conditions of Contract (subject to negotiation of any amendments to those conditions requested by Tenderer in its Tender).

COUNCIL RESERVES THE RIGHT:

- To re-tender the work;
- To proceed with an arrangement other than a Tender Process to the work under the Contract executed;
- To negotiate with a preferred tenderer; or
- Not to proceed with the work.

1.20 Late Tenders

Tenderers will not be able to upload tenders into the Electronic Tender Box after the Closing Time unless Council's systems are inoperative at the time.

Tenders lodged or received by Council after the Tender Closing Time are deemed to be late and will be disqualified and ineligible for consideration unless the Tenderer can clearly document to the satisfaction of Council that an event of exceptional circumstances caused the Tender to be lodged after the Closing Time.

Consideration of a Tender under this circumstance will be at the sole discretion of the Council.

The determination of the Council as to the actual time that the Tender was lodged is final. All offers lodged after the Closing Time will be recorded by the Council.

Unless the Council is satisfied there are exceptional circumstances, the Council will inform a Tenderer whose offer was lodged after the Closing Time of their ineligibility for consideration.

1.21 Alternative Tender or Non-Conforming Tenders

The Council reserves the right, in its absolute discretion, to consider an Alternative Tender or Non-Conforming Tender (provided that any mandatory Evaluation Criteria are met) but is not obliged to do so.

An Alternative Tender may:

- Not comply with the Specifications for the relevant Goods or Services due to inherent design or capability in the operation of the Goods or Services;
- Provide the Goods or Services in a manner different to the Specification in Part 2 Tender Specification of the RFT; or
- Tenderers are encouraged to offer options or solutions which may, in an innovative way, contribute to Council's ability to carry out its services in a more cost-effective manner.

If a Tenderer wishes to submit an Alternative Tender or Non-Conforming Tender it must also:

- i. Submit a Conforming Tender; and
- ii. Submit a copy of the clearly identified Alternative Tender or Non-Conforming Tender in a marked-up form, which identifies all departures from the Conforming Tender. In order to be considered for evaluation, any such Alternative Tender or Non-Conforming Tender must:
 - i. Fully describe its advantages, disadvantages, limitations and capabilities;
 - ii. Be fully costed;
 - iii. Permit ready comparison of the alternative offer with complying Tenders; and
 - iv. Expressly state where it does not comply with the terms of this RFT.

1.22 Joint Offers

Council may only accept a joint offer from two or more Tenderers where it has been stipulated in the Specification.

1.23 Part Offers

Council will not accept an offer to provide only part of the services unless stated otherwise described in Specification.

1.24 Sub-Contractors

Where a Tenderer proposes to sub-contract any of its obligations under the Contract, the Tenderer must state the name and address of each sub-contractor and the extent of the work to be carried out by the sub-contractor in Part 4 Tender Response Form.

1.25 Statement of Non-Compliance, Departures and Assumptions

The Tenderer must declare and detail any non-compliance with departures from or assumptions in relation to, the RFT in its Tender, in Schedule 1.5 of Part 4, Response Schedules.

These non-compliances, departures or assumptions must address any material conditions or positions in relation to the Conditions of Contract and/or Part 2 (Specification).

Submitted Tenders will be deemed as accepting and complying with all of the Conditions of Contract and the Specification unless explicitly noted in Schedule 1.5 of Part 4, Tender Response Schedules.

- Council reserves the right to accept or reject any non-complying tenders.
- Failure to notify Council of any non-compliance may result in a Tenderer's Response being disregarded.

1.26 Tender Validity Period

All Tenders will remain valid and open for acceptance for **90 days** from the Closing Time unless extended by mutual agreement between the Council and the Tenderer(s) in writing.

Where Council seeks an extension of the Validity Period, a request in writing will be forwarded to the Tenderer. The Tenderer shall be required to respond in writing to extend the Validity Period. Failure to respond will result in the Tender not being considered further.

1.27 Tenderer Mistakes/Errors

The Council may, at its discretion, permit a Tenderer to correct an unintentional mistake or anomaly in its Tender after the Closing Time.

In no event will any correction be permitted if the Council reasonably considers that the correction would materially alter the Tender.

Such a variation may be made either:

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

If a Tender is varied in accordance with this clause 1.27, and if in the interests of fairness, it is deemed necessary, the Council will notify in writing each other Tenderer whose Tender circumstances have the same or similar characteristics as the varied Tender, and provide that Tenderer with the opportunity of varying its Tender in a similar way.

Council may exclude from consideration, any Tender in which prices are not clearly and legibly stated or in a requested prescribed format (i.e., price schedule)

Where the Tender is on a lump sum basis and an error has been made in the priced bill of quantities to arrive at the Tender lump sum, the Tenderer shall without undue delay make all such alterations in and to the priced bill of quantities as Council considers necessary for such purpose.

If the Tenderer fails to make the alterations as directed by Council and/or fails to do so within the time set by Council, the Tender shall be deemed to have been withdrawn by the Tenderer.

Where the prices quoted are on a schedule of rates basis and an error has been made in the calculation or summation of the prices, the Tenderer shall be bound by the rates quoted and the Contract sum/total stated in the Tender shall, subject to the agreement of the Tenderer, be altered by Council to reflect the correct calculation or summation of the prices.

If the Tenderer fails or refuses to agree to the alteration of the Contract sum/total, the Tender shall be deemed to have been withdrawn by the Tenderer.

If a Tenderer becomes aware of any other discrepancy, error or omission in its Tender not referred to or covered in paragraphs above and wishes to lodge a correction or additional information, it can only do so if:

- a) the correction or additional information is provided to Council without undue delay; and
- b) the correction or additional information is provided to Council in writing and is initialled by the Tenderer; *and*
- c) Council first agrees to the provision of such correction or additional information.

1.28 Clarification of a Tender

If in the opinion of the Council, a Tender is unclear in any respect, the Council may seek clarification from a Tenderer. Failure to supply clarification to the satisfaction of the Council may render the Tender liable to disqualification.

The Council is under no obligation to seek clarification and reserves the right to disregard any clarification that it considers to be unsolicited or otherwise impermissible.

At any stage during the evaluation phase, Council may request:

- a) clarification of any Tender in respect of a specific issues contained in that Tender; or
- b) interviews with Tenderers; or
- c) Tenderers to provide additional information in writing; or

- d) a site inspection or a presentation of the Tenderers facilities and equipment to clarify any part of the Tender and to examine the capabilities of such facilities and equipment. The Tenderer shall not unreasonably deny such request.

Where requested to clarify any matter contained in the Tender or to provide additional information, Tenderers shall provide such clarification and/or information in writing at the time and place stipulated by Council. Failure to comply with any such request may result in the Tender being excluded from further consideration.

In the event that any clarification, additional information, presentation or site inspection is requested from a Tenderer by Council, the Tenderer shall provide such clarification, additional information, presentation or site inspection at no cost to Council whatsoever.

1.29 Modification of Tenders

Before making a decision on Tenders received, Council may invite one or more Tenderer(s) to modify their Tender. Council is under no obligation to give Tenderer(s) the opportunity to modify their Tender.

1.30 Identity of the Tenderer

The identity of the Tenderer is fundamental to the Council. The Tenderer (and the party to any ensuing contract with the Council) will be the company, person or entity (or in each case, multiple for joint Tenders) named as the Tenderer in the Offer Form in Part 4 (Tender Response Form).

The Council may reject any Tender that is not from or does not disclose a solvent legal entity capable of entering into a contract with the Council. The Tenderer must provide its Australian Business Number (ABN), or, if it does not have an ABN, the reason for not having one.

1.31 Tendered Price

The price outlined in the Tender must quote all prices both *inclusive and exclusive of GST*.

The price tendered must be the total price, including all fees and costs. The pricing will be used by the Council for budgetary purposes and therefore constitutes a tendered price and quotation and not an estimate.

1.32 Ownership of Tender Documentation

This RFT and such Intellectual Property Rights as may exist in the information contained in this RFT shall remain the property of Council. All Confidential Information shall remain the property of Council and (where possible) shall be returned by the Tenderer to Council on completion of the Tender Process. Upon submission, all Tender Responses become the property of Council and the Tenderer authorises Council, its officers, employees, agents and advisers to adapt, modify, disclose, reproduce or do anything else necessary (in Council's sole opinion) to the whole or any portion of the Tender or any other information regarding the Tenderer which has come into Council's knowledge during the Tender Process

a) for the purposes of:

- i. the Tender evaluation process;
- ii. negotiating and managing the Contract with the Tenderer if they are declared the Successful Tenderer; or
- iii. anything else related to the above purposes, including auditing and reporting requirements; or

b) if required to do so by Law.

The Tenderer agrees that if the Council accepts its Tender, it will consent to the Council publishing (on the internet or otherwise) all contract information (including the Successful Tenderer's name and the Contract value).

1.33 Confidentiality

Tender Response

Tenderers are advised that Council will make information provided by the Tenderer publicly available unless it constitutes:

- a) personal information, being information which if released would result in the unreasonable

- disclosure of information about any person or their persona affairs;
- b) private commercial information that relates to trade secrets or if release, would unreasonably expose the Tenderer to disadvantage; or
 - c) other information that is confidential by virtue of the Local Government Act 2020 or any other Act.

Tenderers may provide submissions in relation to the information contained in its Tender Response.

Council Confidential Information

The Tenderer acknowledges that the Confidential Information is a unique and valuable trade secret to the business of Council and is made available to the Tenderer solely for the purposes of the Tender Process. The Tenderer agrees that neither the Tenderer nor its employees, agents, directors, partners, shareholders, subcontractors, consultants or advisers will disclose to any person, any Confidential Information which may have come to their knowledge as a result of the Tender Process unless required to do so by Law.

Unless required by Law, the Tenderer must not:

- d) use any of the Confidential Information; or
- e) copy or record any of it,

in whole or in part, except for the purposes of the Tender Process, and will not make any use of the Confidential Information to the competitive disadvantage of Council.

The Tenderer acknowledges that the disclosure of Confidential Information will cause Council to suffer loss and damage and Council will be entitled (in addition to any entitlement to damages) to an injunction or other equitable relief with respect to any actual or threatened breach by the Tenderer of this clause and without the need on the part of Council to prove any special damage.

1.34 Publicity

No advertisement or statement relating to the Tender Process, or the acceptance of any Tender Response shall be published in any advertising medium or other media outlet without the prior written approval of Council

1.35 Privacy and FOI

The Tenderer acknowledge agrees that:

- a) Council is subject to, and bound by, the Privacy and Data Protection Act 2014 (Vic) and the Information Privacy Principles contained therein, the Health Records Act 2001 (Vic) and Freedom of Information Act 1982 (Vic); and
- b) Council may disclose information and documentation provided by the Tenderer if permitted or required to do so under any of the Acts referred to in clause 1.34(a) or pursuant to any other applicable Law;

The Tenderer shall provide any information or documentation in its possession, custody or power which Council requests from the Tenderer in response to a third-party application under the Freedom of Information Act 1982 (Vic).

1.36 Evaluation Methodology

Tenders will be evaluated against the Evaluation Criteria set out in Schedule A, Item 4 of this RFT.

Information provided by the Tenderer in the Response Schedules (Part 4) of this RFT, will be the basis of the evaluation against these criteria. Tenderers are advised to respond clearly to all of the requirements listed in the Specification (Part 2) of this RFT.

In evaluating offers, the Council will have regard to:

- (a) specific evaluation criteria identified in the list set out in Schedule A, Item 4 including mandatory requirements, if applicable;

- (a) the overall value for money proposition presented in the offer; and
- (b) the particular weighting assigned (in Schedule A, Item 4) to any or all of the criteria (noting that any criteria for which a weighting has not been assigned should be assumed to have equal weighting.)

Any Evaluation Criteria identified as **Mandatory Criteria** **MUST** be met by the Tenderer. For these criteria, a Tender will be assessed on a Yes/No (Pass / Fail) basis. If a Tender fails to fully comply with those evaluation criteria, it will be excluded without further consideration.

Tender will be assessed against other (non-mandatory) Evaluation Criteria, using a weighted scoring process based on information provided with the Tender.

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

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

Tenderers are advised that:

- *Council's objective in evaluating Tenders is to secure the **most advantageous arrangement for the Council and not necessarily the lowest price**.* The factors to be taken into consideration in assessing Tenders and Tenderers include but are not limited to the matters set out in Schedule A, Item 4 Evaluation Criteria.
- The tender evaluation panel will evaluate tenders in accordance with evaluation criteria. For this purpose, the tender evaluation panel will determine the weighting to be applied to each of the evaluation criteria prior to the tender being released.
- The tender evaluation panel may determine not to fully evaluate a tender if, in the opinion of the tender evaluation panel, the tender does not adequately address or meet any of the evaluation criteria.
- Tenderers should ensure that sufficient information is included in their tenders to facilitate proper evaluation in accordance with the stated criteria. Without limiting the information to be submitted by Tenderers, a Tenderer should address the matters indicated in Part 4 Tender Response Form in respect to the evaluation criteria.

1.37 OHS System Assessment

The tender evaluation panel will consider the details of the Tenderer's OH&S system which it provides in response to Tender Response Form.

A tender which provides evidence of the certification of the Tenderer's OH&S system by an independent party acceptable to Council will be eligible for consideration to be awarded the Contract.

If Council otherwise considers that a tender contains details of an OH&S system which meets the minimum required standard, the Tenderer will be eligible for consideration to be awarded the Contract.

Tenders which do not contain any details of an OH&S systems which meets the minimum required standards determined by Council will not be considered for the contract.

Council will determine the minimum required OH&S system standard having regard to legal obligations, the particular circumstances of the Contract and Council's expectations.

1.38 Shortlisting

At any time during the evaluation process, Council **may** shortlist more than one Tenderer.

Any such shortlist:

- a) shall be based on the evaluation criteria, including price; and
- b) shall be undertaken where no benefit is derived from the evaluation of all of the Tenders received.
- c) If the Evaluation Panel decides to hold either an interview, or receive a presentation, or combination of both, from the short-listed Tenderers, Council's Nominated Contact Officer will

send a written notice to the short-listed Tenderers with a date, time, venue and other necessary details about the event.

- d) At the Evaluation Panel's sole discretion, the short-listed Tenderers may be required to submit further information or documentation either before and/or after the interview or presentation in order to clarify or seek further information about their submission.
- e) At any time during the evaluation process, Council, at its absolute discretion, may:**
- i. conduct reference checks and/or make enquiries about one or more of the shortlisted Tenderers in order to ascertain the suitability of the submission and Tenderer;
 - ii. conduct assessment of the financial status of one or more of the shortlisted Tenderer;
 - iii. conduct any other necessary inquiries of one or more of the shortlisted Tenderer.
- f) If Council decides to exercise its right under clause 1.35(e) then Council will make a reasonable written request to provide contact details and contact name of at least 3 recent or current clients of the shortlisted Tenderer/s.
- g) If the shortlisted Tenderer/s, without a reasonable reason, refuse/s or fail/s to comply with the requirements of clause 1.35(f) then Council, at its sole discretion, will disqualify the submission from further consideration. A written notice of disqualification with the reasons will be sent to the short-listed Tenderer.

1.39 Mandatory Criteria

Tenderers must have technical, management, physical and financial resources to supply all goods, services and works outlined in the specifications.

Tenderers will initially be assessed in terms of conformity with the requirements of the RFT, specifications and terms and conditions, and the risk associated with any non-conforming Tender. Council reserves the right to exclude any non-conforming Tender from evaluation at any stage of the Tender process.

1.40 Priority of Documents and Interpretation

If there is any inconsistency between Part 1 (Conditions of Tender) of this RFT and any other parts of the RFT, then unless it is expressly stated that the other part was intended to override this Part 1, (and except where the inconsistency is identified prior to the Closing Time (in which case, clause 1.11 will apply)), the terms of this Part 1 (Conditions of Tender) will prevail to the extent of that inconsistency.

Unless the context otherwise indicates and requires, in the interpretation of these Conditions of Tender and the RFT generally:

- A cross reference to a clause number is a reference to a clause of these Conditions of Tender and includes all of its subclauses
- References to a person includes an individual, business, partnership, company and any other legal entity, as the context requires.
- Words (including defined expressions) denoting the singular will be deemed to include the plural and vice versa.
- Words (including defined expressions) denoting any gender will be deemed to include all other genders.
- Words (including defined expressions) denoting Persons will be deemed to include all trusts, bodies and associations, corporate or unincorporated, and vice versa.
- References to a statute or statutory provision will be deemed to include any statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and any orders, regulations, instruments or other subordinate legislation made thereunder.
- Headings are included for convenience only and will not affect the interpretation of these Conditions of Tender or the RFT or any schedule.
- References to the parties will include their transferees, heirs, assigns, and liquidators, executors and legal personal representatives as the case may be.
- Reference to a document or agreement includes reference to that document or agreement as changed, novated or replaced from time to time.
- Where a word or phrase is given a definite meaning these Conditions of Tender or the RFT a part of speech or other grammatical form for that word or phrase has a corresponding meaning.

- Council may in its sole discretion waive any requirement or obligation under these Conditions of Tender, provided such waiver applies equally in respect of every Tenderer.
- Any waiver given in accordance with the clause above will not affect any other requirement or obligation under these Conditions of Tender.

Notwithstanding anything to the contrary in these Conditions of Tender, if any provision of these Conditions of Tender will be invalid and not enforceable in accordance with its terms, all other provisions which are self sustaining and capable of separate enforcement without regard to the invalid provisions will be and continue to be valid and enforceable in accordance with those terms.

1.41 No Fetter

Except as expressly stated in these Conditions of Tender, nothing in these Conditions of Tender will fetter or prejudice the exercise by Council of any discretion, power or right it has under any Law, policy or agreement.

II. Participation in the Tender Process

1.42 Costs of Tender

Tenderers remain responsible for all costs incurred by them in connection with their Tenders whether before or after the Closing Time and whether incurred directly by them or their advisers including costs arising as a direct or indirect consequence of amendments made to the RFT by the Council. For the avoidance of doubt, the Council shall have no liability whatsoever to Tenderers for the costs of any negotiations conducted in the event that the Council decides not to accept any Tenders.

1.43 No obligation to enter into a contract

By issuing this RFT, Council is under no obligation (whether equitable or legal) to proceed either in whole or in part with the procurement to which the RFT relates. Council is not committed contractually or in any way to any person who may receive the RFT or submit a Tender.

1.44 Canvassing of Officials

Any Tenderer or other recipient of this RFT who solicits or attempts to solicit support for its Tender or otherwise seeks to influence the outcome of the Tender Process by:

- a) offering any inducement, fee, or reward, to any member or officer of the Council, including Councillors, or to any person engaged by the Council, or acting as an adviser for the Council; or
- b) canvassing any persons referred to in this document; or
- c) contacting any member or officer of the Council, including Councillors or any person engaged by Council, about the RFT or any process relating thereto, except as authorised by this RFT;
- d) causing or inducing any person to enter such agreement or to inform the Tenderer of the amount or approximate amount of any rival Tenderer; or
- e) canvassing any of the persons as set out above in connection with the RFT or the outcome of the Tender Process,

will be disqualified from involvement in the RFT process.

1.45 Improper assistance

Tenderers must not seek or obtain the assistance of employees, agents or contractors of the Council in the preparation of their Tender. In addition to any other remedies available to it under law or contract, the Council may, in its absolute discretion, immediately disqualify a Tenderer that it believes has sought or obtained such assistance.

1.46 Anti-Competitive Conduct

Tenderers (and other recipients of this RFT) must not engage in any collusion, anti-competitive conduct or any other similar conduct with any other Tenderer or any other person in relation to the preparation, content or lodgement of their Tender. This includes, but is not limited to, the Tenderer:

- a) fixing or adjusting the amount of its Tender by or in accordance with any agreement or arrangement with any other Tenderer; or
- b) entering 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; or
- c) paying (or offering or agreeing to pay) any sum of money, inducement or valuable consideration, directly or indirectly to any person for doing, having done, causing, or having caused to be done, any act or omission in relation to any other Tender or proposed Tender; or
- d) communicating to any person other than the Council the amount or approximate amount of its proposed Tender (except where such disclosure 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).

Where such actions are drawn to the Council's attention, relevant Tenderers will be disqualified from any further involvement in this tender process.

1.47 Publicity

Recipients of this RFT must not undertake any publicity activities with any part of the media in relation to the RFT, tendering process or Tender without the prior written agreement of the Council, including agreement on the format and content of any publicity.

1.48 Conflict of Interest

The Tenderer represents that it has not placed itself in a position that may give rise to any Conflict in connection with the RFT and Tender. Alternatively, the Tenderer must:

- (a) disclose any Conflict in its Tender;
- (b) notify the Council if any Conflict arises after lodgement of its Tender; and
- (c) indicate the strategy it has in place to manage the Conflict.

The Council may disqualify a Tenderer from the tendering process if the Tenderer fails to notify the Council of any Conflict or if the Council is not satisfied with the strategy the Tenderer has in place to manage the Conflict.

By lodging a Tender, each Tenderer:

- a) waives any right to bring any claim relating to any alleged conflict of interest or in respect of any other matter that the Tenderer is aware of, or ought reasonably to have been aware of, at the time of lodging the Tender; and
- b) represents that it will not make a claim relating to any alleged conflict of interest.

1.49 Council Nominated Officer

After the Tender Closing Time, all correspondence and communications relating to this RFT shall be in writing and directed to the Nominated Officer on procurement@gplains.vic.gov.au.

Tenderers must not contact other Council Officers in relation to this RFT.

1.50 Enquiries of Referees and Others

Tenderers should note that Council may make enquiries of any person, company or organisation to ascertain the suitability of the Tender and the Tenderer.

This may include, but is not limited to, the confirmation of any information provided in the Tender. Previous works completed by the tenderer for Council may be taken into consideration and as such Council Officers may be approached to provide a reference.

1.51 Governing Law

These conditions of tender are governed by the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of the courts of that State.

III. Formation of Contract

1.52 Acceptance of Tender

Council will not be bound to accept the provision of any goods, services or works by any Tenderer unless and until the execution of the Contract by the Successful Tenderer.

Council will award the tender on the basis of the best quality and value for money for the community. In determining the best quality and value for money for the community, Council will have regard to the report prepared by the tender evaluation panel and any other factors which it considers relevant.

1.53 Notification

Successful Tenderers will be notified through eProcure and letter of the acceptance of its tender ("Letter of Acceptance"). The notification of the acceptance of tender will create a contract between the parties on the basis of the Successful Tenderer's tender, the Contract and the Letter of Acceptance.

Unsuccessful Tenderers will also be notified through eProcure.

1.54 Multiple Suppliers

Council reserves the right to appoint more than one supplier for a contract where detailed in the Specification.

1.55 Media Liaison

Council shall be solely responsible for all communications with all media in respect of the progress of the RFT, including the awarding of the Contract. If the Tenderer wishes to communicate with any section of the media in respect to this matter, it must first obtain the written consent of the Council Contact Officer. No Tenderer shall make any public statement in relation to these Conditions of Tender or the subsequent awarding of the contracts without the prior written permission of Council.

1.56 Deed of Guarantee, Undertaking and Substitution

Where the Tenderer is a corporation that is a subsidiary of another corporation or is a corporation that is related to another corporation, the Tenderer shall, if so requested by Council, lodge with Council before acceptance of the Tender, a Deed of Guarantee, Undertaking and Substitution for the performance of the obligations and the discharge of the liabilities of the contractor under the contract, duly executed by the Tenderer and that other corporation.

1.57 Collection of Information

Personal information provided by the Contractor to Council during the Tender Process shall be used only for the primary purpose of evaluating the tender and awarding the contract.

All tender information shall be stored in a secure environment pending the outcome of the Tender Process at which time the successful tender may form part of the contract.

Information relating to unsuccessful tenders shall be stored in a secure environment pending lawful destruction in accordance with the Public Records Office General Retention & Disposal Authority for Records of Common Administrative Functions PROS07/01 - Class No. 3.4.6. Currently this is for a period of two years following the completion of the Tender Process.

Information forming part of the awarded contract shall be stored in a secure environment pending lawful destruction in accordance with the Public Records Office General Retention & Disposal Authority for Records of Common Administrative Functions PROS07/01 - Class No. 3.3.4. Currently this is for a period of seven years following the expiration of the contract. Council has exercised its right to extend this period to ten years following the expiration of the contract.

END OF PART 1 – CONDITIONS OF TENDER