



Conditions of Tender

Table of Contents

1.	Definitions	4
2.	Preliminaries	5
2.1.	Clarification prior to Tender Closing Time	5
2.2.	Queries by Tenderer	5
2.3.	Amendment or addition to the Request for Tender.....	5
3.	Tender Requirements	5
3.1.	Validity Period of Tender	5
3.2.	Tender Response Requirements.....	5
3.3.	Format of Tender	5
3.4.	Part Offers.....	5
3.5.	Alternative Offers	6
3.6.	Tenderers to inform themselves	6
3.7.	Statement of Non-Compliance	6
3.8.	Ownership of Tender Documentation	6
3.9.	Sub-contractors.....	7
3.10.	Joint Offers.....	7
4.	Lodgement of Tenders	7
4.1.	Tender Closing Time	7
4.2.	Method of Lodgement of Tender	7
4.3.	Electronic Tender Box Submissions.....	7
4.4.	Council Tender Box Submissions.....	7
5.	Tender Process.....	8
5.1.	Council Contact Officer	8
5.2.	No obligation to enter into a contract.....	8
5.3.	Variation to the RFT	8
5.4.	Non-Conforming Tenders.....	9
5.5.	Errors in Tenders	9
5.6.	Clarification of Tenders	9
5.7.	Modification of Tenders	9
5.8.	Conduct of Tenderer	10
6.	Tender Evaluation.....	10
6.1.	Evaluation Criteria.....	10
6.3.	Mandatory Criteria.....	10
6.4.	Shortlisting	11
6.5.	Enquiries of Referees and Others	11
7.	Formation of Contract	11
7.1.	Acceptance of Tender	11
7.2.	Notification	11
7.3.	Multiple Suppliers.....	11

8. Media Liaison	11
9. Conflict of Interest	11
10. Deed of Guarantee, Undertaking and Substitution	12
11. Collection Information	12

Conditions of Tender

1. Definitions

1.1. In these Conditions of Tender, unless a contrary intention appears, the following terms shall have the following meanings:

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

“Business Day” means Monday to Friday excluding public holidays in Victoria;

“Closing Date” means the deadline for the close of Tenders set out in the Specification;

“Contact Officer” means the person or persons specified in clause 5.1 of these Conditions of Tender or such other person as Council may from time to time determine;

“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;

“GPS”, “Council” means Golden Plains Shire Council;

“Intellectual Property Rights” means any rights in respect of or in connection with any confidential information, copyright, patents, design rights, reports, drawings, specification, or eligible layout rights and includes any right to apply for registration of such intellectual property rights;

“Tender” means the Tenderer’s response to the Request for Tender;

“Tender Closing Time” means the time and date as stated in the Specification by which the Tenderers Tender Response must be lodged in the tender box as specified in clause 4;

“Tender Response” means the Tenderers Response to the Request for Tender, including Tender Schedules and which must be completed in accordance with these Conditions of Tender;

“Request for Tender” or **“RFT”** means this document and all of its parts inviting Tenderers to offer to meet Council’s requirements by submitting a Tender in accordance with the requirements of these Conditions of Tender;

“Tenderer” means a person, partnership or any other body (whether corporate or otherwise) who submits a Tender in accordance with this Request for Tender;

“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 by clause 3.7 of these Conditions of Tender;

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

1.2. Subject to any inconsistency of subject or context, the following rules of construction shall be used in the interpretation of these Conditions of Tender:

- a) A cross reference to a clause number is a reference to a clause of these Conditions of Tender and includes all of its subclauses;
- b) words importing the singular include the plural (and vice versa) and words importing a gender include any other gender;

2. Preliminaries

2.1. Clarification prior to Tender Closing Time

- 2.1.1. Tenderers seeking clarification of any of the requirements of this RFT prior to the Tender Closing Time **may only do so through Council's eTender system** for the relevant tender.

2.2. Queries by Tenderer

- 2.2.1. If any Tenderer locates any error or omission in the RFT or has any doubt as to the meaning of any part of the RFT, the Tenderer may seek clarification as described in clause 2.1 of these Conditions of Tender.

2.3. Amendment or addition to the Request for Tender

- 2.3.1. Council reserves the right to issue amendments or additions to this RFT at any time before the Tender Closing Time as indicated in the Specification. All Tenderers will be notified of any such amendments or additions via Council's eTender system.

3. Tender Requirements

3.1. Validity Period of Tender

- 3.1.1. Each Tenderer shall for each Tender it submits, maintain a Validity Period of 90 days from the Tender Closing Time.
- 3.1.2. 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.

3.2. Tender Response Requirements

- 3.2.1. In their Tenders, Tenderers must provide:
- a) all information required by the Tender Response;
 - b) 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;
 - c) details of any special conditions pertaining to the Tender;
 - d) details of how the Tender meets the requirements of the Specifications and the evaluation criteria; and
 - e) 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 clause 5.4.

3.3. Format of Tender

- 3.3.1. The Tender shall be prepared in accordance with the following requirements:
- a) Price Basis - All prices quoted shall be in Australian currency.
 - b) Taxes - All prices must be submitted on the basis of the Australian tax legislation as of the date of this RFT.
 - c) Tender Format - Tenderers must prepare and submit their Tender as set out in the Tender Response document.

3.4. Part Offers

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

3.5. Alternative Offers

- 3.5.1. Tenderers must not submit an alternative offer unless it also submits a Tender that complies with the requirements of this RFT.
- 3.5.2. An alternative offer will only be accepted if it is also submitted with a Tender that complies with the requirements of this RFT. In order to be considered for evaluation, any such alternative offer must:
 - a) Fully describe its advantages, disadvantages, limitations and capabilities;
 - b) Be fully costed; and
 - c) Permit ready comparison of the alternative offer with complying Tenders.

3.6. Tenderers to inform themselves

- 3.6.1. By responding to this RFT, a 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, services and works sought, and in preparing its Tender, it has:
 - a) Fully examined the RFT (including all documents the RFT refers to) and any other information made available by Council to Tenderers for the purpose of this RFT; and
 - b) made its own reasonable enquiries (including inspections) to fully inform itself of all the risks, contingencies and other circumstances which may impact on the Tender and the proper performance of the Contractor's obligations under the Contract; and
 - c) has not relied upon any warranty or representation (whether oral or in writing or by conduct) made on behalf of Council except where such warranty or representation is contained in this RFT or made through the processes specified by these Conditions of Tender; and
 - d) satisfied itself as to the accuracy and sufficiency of the Tender (including the Tender prices) to achieve the due and proper performance and completion of the Contractor's obligations under the Contract.

3.7. Statement of Non-Compliance

- 3.7.1. Tenderers should provide compliance statements indicating their compliance or otherwise with the parts of this RFT that are listed in the Specification and the Conditions of Contract.
- 3.7.2. The Statement of Non-Compliance must be completed in the format in Schedule 2 Statement of Departures in the Tender Response document.
- 3.7.3. Responses should be in the order in which the paragraphs or clauses appear and refer to the relevant paragraph or clause number.
- 3.7.4. Tenderers should only indicate 'Partially Complies' or 'Does Not Comply' and provide an explanation of their partial or non-compliance.

3.8. Ownership of Tender Documentation

- 3.8.1. By submitting a Tender, the Tenderer:
 - a) licenses Council to reproduce for its own purposes whatsoever, the whole or any portion of the Tender notwithstanding any copyright or other Intellectual Property Right that may subsist in those documents; and
 - b) acknowledges that the Tender and all other documentation submitted with it shall not be returned to the Tenderer
- 3.8.2. Council acknowledges that, subject to paragraph 3.8.1.a) above, the Intellectual Property Rights in the Tender documentation remains vested in the Tenderer concerned.
- 3.8.3. The Tenderer must not copy or reproduce any of the Request for Tender Documents except where required for the purpose of preparing and submitting a Tender and then only to the extent that it is reasonably necessary.

3.9. Sub-contractors

- 3.9.1. 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.

3.10. Joint Offers

- 3.10.1. GPS will accept joint offers only where it has been stipulated in the Specification.

4. Lodgement of Tenders

4.1. Tender Closing Time

- 4.1.1. Tenders will only be received on or before the Tender Closing Time (Australian Eastern Standard Time) stated in the Specification in accordance with these Conditions of Tender.

4.2. Method of Lodgement of Tender

- 4.2.1. The Tender can only be lodged in the:

- Electronic Tender Box

OR

- Council Tender Box.

Please do not submit to both Tender Boxes. Email submissions *will not* be accepted.

4.3. Electronic Tender Box Submissions

- 4.3.1. The Electronic Tender Box can be found at Councils eTender site <https://www.tendersearch.com.au/goldenplains/> ("Electronic Tender Box"). Tenderers must log into the eTender site, go to current tenders, choose the relevant tender, then upload the tender response.
- 4.3.2. 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.
- 4.3.3. *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.**
- 4.3.4. Tenderers should allow sufficient time for the upload of documents to be completed prior to the Tender Closing Time. The upload must be completed by the Tender Closing Time or the tender may not be submitted.

4.4. Council Tender Box Submissions

- 4.4.1. Tenders can be placed in the Council Tender Box (in person, or by courier or mail) located at Golden Plains Shire Offices, 2 Pope St, Bannockburn ("Council Tender Box") and submitted in a plain sealed envelope or container clearly marked externally with the following:

Tender Name and Number
Tender Box
Golden Plains Shire Office
2 Pope St
Bannockburn VIC 3331

- 4.4.2. Tenders lodged in the Council Tender Box, can be one executed bound copy **plus** a CD or memory stick that has a complete copy of the Tender submitted. The electronic copy of **OHS and other manuals, must be one (1) complete file not separate files.**
- 4.4.3. It is the responsibility of the Tenderer to ensure that any tender being lodged by a courier is placed in the Council Tender Box. Council has no obligation to consider a tender lodged by way of a courier that is not placed in the Council Tender Box.

- 4.4.4. Tenders lodged by mail must be posted such that they arrive prior to the Tender Closing Time, and can be placed in the Council Tender Box. Council expressly disclaims any liability for a failure to place any tender received by mail in the Council Tender Box.

4.5. Late Tenders

- 4.5.1. Tenders lodged or received by Council after the Tender Closing Time are deemed to be late. Tenders that are received after the closing time and date shall not be opened (if possible), marked 'Late Tender' with the date and time received. Any late tenders will be reported in the tender report. Late tenders will be returned to the Tenderers sender marked 'Late Tender - Not Accepted.'
- 4.5.2. Tenders received after the Tender Closing Time and date will not be accepted unless Council's systems are inoperative at the time or there has clearly been a mishandling of the Tender by Council.
- 4.5.3. Tenderers will not be able to upload tenders into the Electronic Tender Box after the Closing Time for Tenders.

4.6. Tender Addenda

- 4.6.1. Council may issue to each Tenderer addenda to the Tender Documents at any time up to two (2) business days prior to the Tender Closing Time.
- 4.6.2. Tenderers must refer to each tender addendum in their tenders by completing Schedule 1.
- 4.6.3. The Contact Person 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 a written addendum.

4.7. Changes to the Tender Process

- 4.7.1. Council may at any time, prior to the Tender Closing Time, by notice through Council's eTender system to Tenderers, change the:
- 4.7.1.1. Tender Closing Time;
 - 4.7.1.2. tender procedure; or
 - 4.7.1.3. scope of the Contract outlined in the Tender Documents.

5. Tender Process

5.1. Council Contact Officer

- 5.1.1. **After** the Tender Closing Time, all correspondence and communications relating to this RFT shall be in writing and directed to the Council Contact Officer stated in the Specification.

5.2. No obligation to enter into a contract

- 5.2.1. 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.

5.3. Variation to the RFT

- 5.3.1. Council reserves the right to:
- a) 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; and
 - b) suspend, terminate or abandon this RFT at any time during or after the Tender Closing Time by written notice to each Tenderer.

5.4. Non-Conforming Tenders

- 5.4.1. Any Tender, which does not comply with the requirements of this RFT, may be classified as non-conforming and may be excluded from further consideration. The decisions as to whether a Tender is non-conforming or not and whether a non-conforming Tender is to be accepted or excluded from further consideration are matters that are within Council's sole and absolute discretion.

5.5. Errors in Tenders

- 5.5.1. Council may exclude from consideration, any Tender in which prices are not clearly and legibly stated.
- 5.5.2. 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.
- 5.5.3. 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.
- 5.5.4. 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.
- 5.5.5. 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.
- 5.5.6. If a Tenderer becomes aware of any other discrepancy, error or omission in its Tender not referred to or covered in paragraphs (b) and (c) 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.

5.6. Clarification of Tenders

- 5.6.1. At any stage during the evaluation phase, Council may request:
- a) clarification of any Tender in respect of 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.
- 5.6.2. 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.
- 5.6.3. 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.

5.7. Modification of Tenders

- 5.7.1. Before making a decision on Tenders received, Council may invite all Tenderers to modify their Tenders; or

- 5.7.2. If Council decides not to accept any Tender, it may invite a Tenderer to submit a modified Tender, in which case Council must advise all Tenderers of its reasons for inviting that Tenderer to modify their Tender.

5.8. Conduct of Tenderer

- 5.8.1. Any Tenderer found to have:
- a) Offered a bribe, gratuity, bonus, discount of any sort or enticement to any Council officer or Councillor; or
 - b) Discussed the Tender with any Council officer or Councillor (with the exception of Council Contact Officer) at any time prior to the awarding of the Contract to the successful Tenderer, shall have their Tender rejected by Council.

6. Tender Evaluation

6.1. Evaluation Criteria

- 6.1.1. 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 this clause 6.
- 6.1.2. The tender evaluation panel will evaluate tenders in accordance with evaluation criteria listed in Tender Response document - Schedule 4. For this purpose, the tender evaluation panel will determine the weighting to be applied to each of the evaluation criteria.
- 6.1.3. 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.
- 6.1.4. 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 Schedule 4 with respect to the evaluation criteria.

6.2. OH&S System Assessment

- 6.2.1. The tender evaluation panel will consider the details of the Tenderer's OH&S system which it provides in response to Tender Response document - Schedule 3.
- 6.2.2. 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.
- 6.2.3. 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.
- 6.2.4. Tenders which do not contain details of OH&S systems which meet the minimum required standards determined by Council will not be considered for the contract.
- 6.2.5. For the purposes of clause 6.2, 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.

6.3. Mandatory Criteria

- 6.3.1. Tenderers must have technical, management, physical and financial resources to supply all goods, services and works outlined in the specifications.
- 6.3.2. 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.

6.4. Shortlisting

- 6.4.1. 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.

6.5. Enquiries of Referees and Others

- 6.5.1. Tenderers should note that Council may make enquiries of any person, company or organisation to ascertain the suitability of the Tender and the Tenderer.
- 6.5.2. This may include, but is not limited to, the confirmation of any information provided in the Tender.

7. Formation of Contract

7.1. Acceptance of Tender

- 7.1.1. 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.
- 7.1.2. 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.

7.2. Notification

- 7.2.1. Successful Tenderers will be notified by 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.
- 7.2.2. Unsuccessful Tenderers will also be notified in writing.

7.3. Multiple Suppliers

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

8. Media Liaison

- 8.1.1. Council shall be solely responsible for all communications with all media in respect of the progress of the RFT (including the Tender evaluation process, all negotiations and awarding of the Contract). If the Tenderer wishes to communicate with any section of the media in respect of any of these matters, 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.

9. Conflict of Interest

- 9.1.1. The Tenderer represents and warrants to Council that it does not have any actual or potential conflicts of interest in connection with the Invitation to Tender.
- 9.1.2. Should any actual or potential conflict of interest arise or come to the Tenderer's attention at any time prior to the signing of the final contract, the Tenderer must immediately notify Council in writing detailing the actual or potential conflict.
- 9.1.3. 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.

10. Deed of Guarantee, Undertaking and Substitution

10.1.1. 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.

11. Collection Information

11.1.1. 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.

11.1.2. 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.

11.1.3. 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.

11.1.4. 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.