



PART 1

CONDITIONS OF TENDER

Request for Tender (RFT)	Spray Seal Works
Closing Time:	25.08.2017
RFT Number:	001-17.18



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1. DEFINITIONS

1.1 In these Conditions of Tender, except where the context otherwise requires:

‘Closing Time’ means Five (5)pm, Friday 25.08.2017 Australian Central Standard Time.

‘Conditions of Tender’ means these Conditions of Tender.

‘Confidential Information’ means any technical, commercial or other information, ideas, concepts, know-how, data, drawings, specifications or designs of any kind:

- (a) owned by the Principal and supplied or made available by the Principal to the Tenderer; or
- (b) created by the Tenderer, from the material supplied or made available to the Tenderer by the Principal for the purposes of submitting the Tender.

‘Contact Person’ means, Arthur Johnstone.

‘Contract’ has the meaning given in the General Conditions of Contract.

‘Contract Price’ has the meaning given in the General Conditions of Contract.

‘Contractor’ has the meaning given in the General Conditions of Contract.

‘FOI Act’ means the *Freedom of Information Act 1991*.

‘General Conditions of Contract’ means the General Conditions of Contract comprising Part 4 of the Request for Tender.

‘GST’ has the meaning given in the General Conditions of Contract.

‘Letter of Acceptance’ has the meaning given in the General Conditions of Contract.

‘Local Government’ has the meaning given in the General Conditions of Contract.

‘Principal’ means District Council of Elliston

‘Relevant Person’ means the Tenderer and each person engaged in the preparation of a Tender on behalf of the Tenderer.

‘Request for Tender’ or **‘RFT’** see Clause 2.1.

‘Site’ has the meaning given in the General Conditions of Contract.

‘Special Conditions of Contract’ means the Special Conditions of Contract (if any) comprising Part 5 of the Request for Tender.

‘Specification’ means the Specification comprising Part 2 of the Request for Tender, including any amendment or addition to the Specification.

‘Tender’ means a tender lodged in response to the Request for Tender.

‘Tenderer’ means any person lodging a Tender.

‘Tender Response’ means the Tender Response comprising Part 3 of the Request for Tender, including any templates or attachments to be completed and included in a Tender.



‘Work’ has the meaning given in the General Conditions of Contract.

2. STRUCTURE OF REQUEST FOR TENDER

- 2.1 The documents comprising the Request for Tender are, collectively :
- (a) Part 1 – Conditions of Tender (read and keep this part); and
 - (b) Part 2 – Specification (read and keep this part); and
 - (c) Part 3 – Tender Response which, when completed by the Tenderer, comprises the Tender of the Tenderer (complete and return this part); and
 - (d) Part 4 – General Conditions of Contract (read and keep this part); and
- 2.2 All parts of the Request for Tender must be read and construed together so that all parts are as far as possible consistent. Where the documents are inconsistent, the documents should be read and construed in the order of priority from document (a) to (e) as follows:
- (a) Conditions of Tender;
 - (b) Specification;
 - (c) Special Conditions of Contract;
 - (d) General Conditions of Contract;
 - (e) Tender Response.
- 2.3 The Request for Tender is not an offer. The Request for Tender is an invitation for persons to submit an offer for the execution and completion of the Work particularised in the Specification.

3. TENDER BRIEFING/SITE INSPECTION

- 3.1 Upon request to the Principle

4. OBTAINING INFORMATION

- 4.1 The Principal will provide the Tenderer with the Request for Tender. No fee is payable for the supply of the Request for Tender.
- 4.2 Any additional information required by a Tenderer may be obtained from the Contact Person.
- 4.3 Tenderers must not direct requests for information to, or seek to discuss the Request for Tender process with, any Councillor or officer of the Principal other than the Contact Person.
- 4.4 The Principal will not be bound by any advice or information furnished by a Councillor or officer of the Principal with respect to the Request for Tender.
- 4.5 Information provided to the Tenderer by or on behalf of the Principal:
- (a) will be provided for the convenience of the Tenderer only, and, unless expressly incorporated into the Contract, will not form part of the Contract; and
 - (b) is not warranted or represented by the Principal as accurate, correct or adequate.
- 4.6 If the Principal makes information available to a Tenderer, the Principal reserves the right to distribute the information to each Tenderer who has obtained a copy of the Request for Tender from the Principal.
- 4.7 If requested by the Principal, the Tenderer must:
- (a) provide further information relating to the Tender; and
 - (b) give a presentation at a time and place nominated by the Principal:
 - (i) to demonstrate the Tenderer's financial substance, technical capabilities and resources; and



- (ii) to demonstrate its ability to comply with the terms and conditions of the Contract; and
- (iii) in relation to anything else relative to the Tender; and
- (c) allow the Principal and its agents to inspect any facility or equipment the Tenderer proposes to use in complying with the terms and conditions of the Contract; and
- (d) authorise the Principal and its agents (in writing, if required) to contact any referee nominated by the Tenderer; and
- (e) authorize the Principal (in writing, if required) to obtain information about the Tenderer, particularly information relevant to the Tenderer's ability to discharge the responsibilities of the Contractor under the Contract, from any third party the Principal considers may be able to provide that information.

4.8 The Principal may provide information to Tenderers in electronic format, in addition to the hard copy format.

4.9 Where there is an inconsistency between the information in the electronic format and the hard copy information, the latter prevails.

5. RESPONSIBILITIES OF TENDERER

5.1 Before submitting its Tender, each Tenderer must:

- (a) carefully read and consider the Request for Tender and any other information made available by the Principal with respect to the Request for Tender and the process of tendering for the Contract; and
- (b) read and consider all information relevant to the risks, contingencies and other circumstances relevant to the Request for Tender; and
- (c) inform itself of the nature of the obligations it must discharge under the Contract; and
- (d) inform itself of the labour, plant and equipment and other items necessary, suitable or desirable to enable the Tenderer to discharge its obligations under the Contract; and
- (e) not rely upon information provided by or on behalf of the Principal; and
- (f) independently verify any information provided by or on behalf of the Principal, and satisfy itself that the information is adequate and accurate; and
- (g) satisfy itself that the information in its Tender is accurate and complete; and
- (h) satisfy itself that its Tender complies in all respects with the requirements of the Conditions of Tender; and
- (i) Independently examine the Site and the sub-surface conditions of the Site.

5.2 In evaluating Tenders and determining with whom it will enter the Contract, the Principal will rely upon Tenderers having complied with the requirements of Clause 5.1.

5.3 Failure to comply with any requirement in Clause 5.1 will not relieve the relevant Tenderer of responsibility to complete the Contract in accordance with its terms, and in particular, the price or rate tendered by the Tenderer.

5.4 The Principal will not be responsible for the payment of any expenses or losses incurred by the Tenderer in:

- (a) attending any briefing or site inspection under Clause 3; or
- (b) preparing and lodging its Tender; or
- (c) participating in any post Tender activities.

6. FORMAL REQUIREMENTS

6.1 The Tender must be submitted in writing in the form of the Tender Response.



- 6.2 The Tender Response must be fully completed, and include all supporting documents and materials required by both the Conditions of Tender and the Tender Response.
- 6.3 The Tender Response must contain the Tenderer's:
- (a) full name; and
 - (b) Australian Business Number; and
 - (c) Address and facsimile number for the service of notices.
- 6.4 If the Tenderer operates as a firm, the Tender Response must contain:
- (a) the full names and addresses of each member of the firm; and
 - (b) the business name under which the firm trades; and
 - (c) the firm's address and facsimile number for the service of notices; and
 - (d) the firm's Australian Business Number.
- 6.5 If the Tenderer is a corporation, the Tender Response must contain details of the corporation's:
- (a) name; and
 - (b) business name (if applicable); and
 - (c) Australian Business Number; and
 - (d) registered office; and
 - (e) address and facsimile number for the service of notices; and
 - (f) the name, telephone number and address (if different from the address for service of notices) of a natural person who is authorised by the corporation to represent it in relation to the Tender.
- 6.6 If the Tenderer is a consortium or a joint venture, the Tender Response must contain details of:
- (a) the name of each member; and
 - (b) the structure of the consortium or joint venture, including the proposed managerial structure; and
 - (c) the role to be played by each member in complying with the terms and conditions of the Contract; and
 - (d) in the case of a consortium, the member who is to be the principal contractor on behalf of the consortium.
- 6.7 The Tender Response must be duly executed in a manner that binds the Tenderer.
- 6.8 The Contract Price in the Tender Response must be:
- (a) in Australian dollars; and
 - (b) unless otherwise specified in the Tender Response, GST inclusive.
- 6.9 A Tenderer must provide 3 executed copies of its Tender (one to be marked "ORIGINAL" and each other (if any) to be marked "COPY".) Any brochure or pamphlet which forms part of a Tender must be attached to both the original and each copy of the Tender. In addition, the Offer and all related documentation (as described above) may be required electronically and readable by Microsoft Office applications (see clause 6.12).
- 6.10 The Tenderer must:
- (a) securely attach (for example, by bulldog clip), but not bind or staple, the original of its Tender; and
 - (b) bind each copy of its Tender; and
 - (c) number consecutively each page of its Tender; and
 - (d) include an index in the Tender.
- 6.11 The identity of the Tenderer is fundamental to the Principal. For the purposes of a Tenderer's Tender, the Tenderer is the person, persons, corporation or corporations:



- (a) who is named as the Tenderer in the Tender Response; and
- (b) who has duly executed the Tender Response in a manner that binds the Tenderer.

- 6.12 All prices offered by the Tenderer are to be fixed for the term of the Contract. Unless otherwise indicated, prices tendered must include delivery, unloading, packing, marking and all applicable levies, duties, taxes and charges. Any charge not stated in the Tender Response as being additional will not be allowed as a charge for any transaction under any resultant Contract.
- 6.13 Where an Act of the State of South Australia requires that a person be registered or licensed to carry out the Work, the Tenderer must state in the Tender Response in the space provided, its registration or license number. A Tender may be rejected if the Tenderer fails to provide such registration or license number.
- 6.14 Monetary values that appear in the Tender Response, such as provisional sums, prime cost amounts, value of Principal supplied items, etc are net values. They do not include GST.
- 6.15 The Contract is not subject to adjustment for site allowances.

7. CONFORMING AND NON-CONFORMING TENDERS

- 7.1 A Tenderer may lodge non-conforming Tenders only if it has lodged a conforming Tender.
- 7.2 Each non-conforming Tender must be accompanied by a clear summary of all points of difference between the non-conforming Tender and the conforming Tender.
- 7.3 Each non-conforming Tender must be submitted on a separate Tender Response.
- 7.4 A Tender may be considered as non-conforming if the Tenderer has failed to supply any of the information required by the Conditions of Tender, does not comply with any of the requirements of the Conditions of Tender or has been lodged subject to any condition or qualification.
- 7.5 If more than one conforming Tender is lodged, each Tender must be accompanied by a clear summary of all points of difference between each conforming Tender.
- 7.6 The Principal will not be obliged to consider any Tender that does not comply with the requirements of the Conditions of Tender.

8. LODGEMENT OF TENDER

- 8.1 Each Tender must be submitted in a sealed envelope, addressed to:

Operations Manager
District Council of Elliston
PO Box 46
ELLISTON SA 5670

and clearly marked with the number and title of the Tender as shown on the front cover of the Conditions of Tender.

- 8.2 Where a Tenderer lodges a non-conforming Tender:



- (a) the conforming and non-conforming Tenders must be submitted in separate envelopes; and
- (b) the non-conforming Tender must be clearly marked, "ALTERNATIVE TENDER" (in addition to being clearly marked in accordance with Clause 8.1).

8.3 The Principal may extend the Closing Time at its discretion.

8.4 The Principal reserves the right to consider a Tender which is not in the Tender Box by the Closing Time if, in the opinion of the Principal, there is satisfactory evidence that:

- (a) the Tender was dispatched by prepaid post or courier service in sufficient time to effect delivery by the Closing Time under normal circumstances; and
- (b) at the Closing Time the Tender was still in the course of delivery.

8.5 A Tender will not be accepted if it is submitted only:

- (a) electronically; or
- (b) by facsimile; or
- (c) electronically and by facsimile.

8.6 A Tenderer must not alter or add to the Tender Response unless required by the Conditions of Tender.

8.7 A Tender is irrevocable for 90 days after the Closing Time.

8.8 The period in Clause 8.7 may be extended by mutual agreement between the Tenderer and the Principal.

8.9 Each Tender constitutes an offer by the Tenderer to the Principal to execute and complete the Work required under, and otherwise to satisfy the requirements of, the Specification on the terms and conditions of the Contract.

9. OPENING OF TENDERS

9.1 Tenders will be opened after the Closing Time.

9.2 Tenders will not be opened publicly.

10. TENDER EVALUATION PROCESS

10.1 Tenders will be evaluated by reference to the following:

- (a) Value for money;
- (b) WHS Systems
- (c) Delivery Timeframes
- (d) References

10.2 If a Tender Response for a Tender is not fully completed or does not include all supporting documents and materials required by the Conditions of Tender or the Tender Response, the Tender may be rejected.

10.3 In evaluating Tenders, the Principal may:

- (a) require presentations from Tenderers; and
- (b) conduct interviews with Tenderer's staff and subcontractors; and
- (c) contact Tenderers' referees; and
- (d) investigate a Tenderer's structure and management, and that of any relevant subsidiary or related corporation; and



- (e) make its own assessment of the Tenderer's ability to comply with the terms and conditions of the Contract at the tendered price; and
- (f) verify that the Tenderer holds all necessary permits, licences, approvals and certifications necessary to enable it lawfully to comply with the terms and conditions of the Contract.

- 10.4 Tenderers must give the members of the evaluation panel of the Principal any cooperation and assistance reasonably requested of them to facilitate consideration of their Tenders.
- 10.5 Compliance criteria for the Request for Tender are specified in Item 3.1 of the Tender Response. Each Tender will be assessed on a Yes/No basis as to whether each of the compliance criterion is satisfied by the Tenderer or not. If a Tender Response is assessed as "No" in respect of a criterion, the Tender may be rejected.
- 10.6 Qualitative criteria for the Request for Tender are specified in Item 3.2 of the Tender Response. The qualitative criteria may be weighted to indicate the relative degree of importance that the Principal places on the technical aspects of the execution and completion of the Work. Each Tenderer must address each of the qualitative criteria specified in Item 3.2 of the Tender Response. If a Tenderer fails to address any of the qualitative criteria in Item 3.2 of the Tender Response, its Tender may be rejected.
- 10.7 Pricing Criteria in the Tender Response are weighted.
- 10.8 The tendered price will be considered along with related factors affecting the total cost to the Principal. Eg the lifetime operating costs of goods or the Principal's contract management costs may also be considered in assessing the best value for money outcome.

11. CLARIFICATIONS AND VARIATIONS

- 11.1 The Principal may issue to Tenderers before the Closing Time:
 - (a) additional information; and
 - (b) information clarifying or correcting information previously provided, to assist them in preparing their Tenders.
- 11.2 If the Principal issues information to Tenderers under Clause 11.1, each Tenderer must take the information into account in the preparation of its Tender.
- 11.3 After the Closing Time, the Principal may (without limiting its options):
 - (a) request clarification or further information from any Tenderer; and
 - (b) invite all Tenderers to change their Tenders in response to an alteration to the Specification or any of the terms and conditions of the Contract; and
 - (c) negotiate with one or more Tenderers upon any aspect of their Tenders.

12. COMMISSIONS AND INCENTIVES

- 12.1 A Tender will not be considered if anybody offers or gives anything to a Councillor of the Principal, or any officer or agent of the Principal, as an inducement for the purpose of seeking to influence the manner in which the Tender is evaluated or the Contract awarded.

13. CONFIDENTIALITY

- 13.1 The Tenderer:
 - (a) acknowledges that the Confidential Information is sensitive and valuable, and will remain at all times the property of the Principal; and



- (b) must not use the Confidential Information for any purpose other than preparing its Tender; and
- (c) must not copy any material comprising or containing Confidential Information, other than where (and then only to the extent that) copying is necessary to enable it to prepare its Tender; and
- (d) must allow access to the Confidential Information by Relevant Persons only to the extent necessary to enable the Tender to be prepared; and
- (e) must obtain the Principal's written consent before disclosing Confidential Information to a person other than a Relevant Person.

13.2 The consent of the Principal to disclosure of the Confidential Information by the Tenderer may be given or withheld on such terms and conditions as the Principal considers appropriate.

13.3 The Tenderer's obligation under this Clause 133 continues after closure of tenders and award of the Contract.

13.4 The Principal reserves the right to retrieve from a Relevant Person any Confidential Information held by that person, subject to the Principal having given written notice to the Tenderer in writing that the Relevant Person is to be denied access to the Confidential Information.

13.5 Failure or delay by the Principal in enforcing strict compliance with this Clause 133 or pursuing a remedy under this Clause 133 will not constitute a waiver or implied variation of the entitlement or remedy.

13.6 This Clause will not apply to an item of Confidential Information where the Tenderer can establish that:

- (a) the item has been transferred to the public domain through no fault of the Tenderer; or
- (b) the item was already in the Tenderer's possession when it was supplied or made available by the Principal, and not acquired directly or indirectly from the Principal; or
- (c) it has received from the Principal written notification that the Principal no longer requires the Tenderer to keep the item confidential.

14. ACCEPTANCE OF TENDER

14.1 The Principal will not be bound to accept the lowest or any Tender.

14.2 The Principal may accept a Tender from a Tenderer by giving written notice in the form of a Letter of Acceptance to the Tenderer who submitted the Tender to the Principal.

14.3 The Contract will not come into existence until the Principal has given written notice in the form of a Letter of Acceptance to the Tenderer.

14.4 When the Contract comes into existence the Tenderer becomes the Contractor for the purposes of the General Conditions of Contract.

14.5 The Principal reserves the right to accept a Tender in part or in whole.

15. CONFIDENTIAL INFORMATION AND FREEDOM OF INFORMATION

15.1 Each of the Council and the Contractor agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose whatsoever, except for the purposes of and in the manner contemplated by this Contract, and agrees that it will:

- 15.1.1 keep confidential;



- 15.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;
 - 15.1.3 maintain proper and secure custody of; and
 - 15.1.4 not use or reproduce in any form, any Confidential Information belonging to the other party.
- 15.2 The duty of confidence referred to in Clause 13.1 will not extend to such of the Confidential Information as:
- 15.2.1 was known to the Receiving Party as at the date of this Contract otherwise than as a result of disclosure by the Disclosing Party;
 - 15.2.2 was in or becomes part of the public domain otherwise than as a result of a breach by the Receiving Party of its obligations under this Contract;
 - 15.2.3 is disclosed to the Receiving Party by any third party which does not owe any obligation to the Disclosing Party (directly or indirectly); or
 - 15.2.4 is required by law to be disclosed by the Receiving Party provided that the Receiving Party will immediately notify the Disclosing Party of any such requirement – if possible before making the disclosure.
- 15.3 The onus of proof of the matters referred to in clause 13 is on the Receiving Party.
- 15.4 Notwithstanding the provisions of clause 13.1 Confidential Information may be disclosed by the Receiving Party:
- 15.4.1 to employees, legal advisers, auditors and other consultants of a party requiring the information for the purposes of this Contract; or
 - 15.4.2 with the consent of the Disclosing Party, which consent may be given or withheld at the Disclosing Party's absolute discretion.
 - 15.4.3 If the Receiving Party proposes to release or provide access to Confidential Information under clause 0, it will not do so until it has obtained from such employers, legal advisors, auditors or other consultants a written undertaking to keep that information confidential and not to release it to any other party.
- 15.5 *The Freedom of Information Act 1991 (SA) ("FOI Act")* gives members of the public rights to access Council documents. The FOI Act promotes openness in governance and accountability of government agencies and to achieve these objects confers on members of the public a legally enforceable right to be given access to documents, including contracts, held by the Council subject but not limited to such restrictions as are consistent with the public interest, commercial in confidence and/or the preservation of personal privacy in respect of those from whom information is collected and held by the Council and other public authorities.
- 15.6 For the purposes of the FOI Act, the following clauses, annexures, schedules and appendices of this Contract are confidential: Nil
- 15.7 Unauthorised disclosure of the confidential clauses and the subject matter contained therein constitutes a breach of a party's obligations under this Contract.
- 15.8 For the purposes of this clause:
- 15.8.1 "Confidential Information" means any information (in whatever form and whether recorded or not) which is:
 - 15.8.1.1 designated as confidential;
 - 15.8.1.2 confidential by its nature; or
 - 15.8.1.3 disclosed or obtained in circumstances importing an obligation of confidence; and specifically includes (but is not limited to) the information specified in clause 0;
 - 15.8.2 "Disclosing Party" means a party who discloses its Confidential Information under this Contract and "Receiving Party" means a party who receives Confidential Information under this Contract; and



15.8.3 “third party” means and includes all persons, including all consultants, agents, officers, directors and employees of a party.

16. OMBUDSMAN

16.1 Without limiting the Contractor’s obligations under this Contract, the *Ombudsman Act, 1976* provides that the Ombudsman may investigate any act of an individual or organisation done in the performance of functions conferred under a contract with certain public authorities. The Contractor agrees to ensure timely compliance with all obligations arising under the *Ombudsman Act, 1976*, and any other applicable law, in relation to any such investigation involving the Council.

17. POLICIES PARTICULAR TO THE PRINCIPAL

17.1 Tenders will be evaluated by reference to criteria which are particular to the Principal as follows:
(a) Work Health Safety Systems

18. IN-HOUSE TENDERS

Nil