



# Request Submission Conditions

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# REQUEST SUBMISSION CONDITIONS

## 1. Definitions and Interpretation

### 1.1 Definitions

In the Request:

| Term                  | Meaning   |
|-----------------------|---|
| Addendum              | Means any addendum issued by the Principal in relation to the Request and made available to all potential or invited Respondents.   |
| Closing Time          | Means the time and date specified on the front of the Request as the Closing time for the submission of Offers.   |
| Contract              | Means either:<br>1 The Framework Agreement between the Principal and the successful Respondents of a Panel of Pre-Qualified Suppliers, for the supply of the goods, services or works under the contract by the successful Respondents; or<br>2 The contract between the Principal and the successful Respondent for the supply of the goods, services or works by the successful Respondent. |
| General Conditions    | Means the General Conditions of Contract.   |
| Offer                 | Means the Offer submitted by the Respondent in response to the Request.   |
| Offer Information     | Means all information, other than the Respondent's Offer, submitted by the Respondent in response to, or in connection with, the Request.   |
| Offer Validity Period | Means the period specified in clause 1.3 of Section 1 in Part A of the Request.   |
| Offered Price         | Means the Price, of the Price determined by applying the formula or method, specified in the Offer.   |
| Respondent            | Means any person who submits an Offer.  |
| Request Conditions    | Means these Request Submission Conditions.  |
| Section               | Means a Section of the Request document.  |

### 1.2 Interpretation

- a) In the Request and these Request Submission Conditions, words defined in the General Conditions of Contract also apply to these Request Submission Conditions, and unless the context otherwise requires:
  - i) Words in the singular include the plural and vice-versa
  - ii) A reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them
  - iii) Words importing a gender include any gender

- iv) A reference to a person include a Public Authority, a public body, a company and an incorporated or unincorporated association or body of persons
- v) A reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including but not limited to, a person taking by novation) and permitted assigns
- vi) If the Respondent consists of a partnership or joint venture, then:
  - 1) An obligation imposed on the Respondent under the Request binds each person who comprises the Respondent jointly and severally
  - 2) Each person who comprises the Respondent agrees to do all things necessary to enable the enable the obligations imposed on the Respondent under the Request to be undertaken
  - 3) The act of one person who comprises the Respondent binds the other persons who comprise the Respondent;
- vii) An agreement, representation or warranty on the part of or in favour of two or more persons binds, or is for the benefit of, them jointly and severally
- viii) A reference to the Request or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the Principal) or the Respondent
- ix) A reference to a clause, schedule, attachment or appendix is a reference to a clause, schedule, attachment or appendix to the Request
- x) All the provisions in any schedule, attachment or appendix to the Request are incorporated in, and form part of, the Request and bind the Principal and the Respondent
- xi) Headings are included for convenience and do not affect the interpretation of the Request;
- xii) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it
- xiii) No rule or interpretation is to be applied to disadvantage the Principal or the Respondent on the basis that it was responsible for preparing the Request
- xiv) If a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning
- xv) If the word “including” or “includes” is used, the words “without limitation” are taken to immediately follow
- xvi) A reference to writing includes any means of representing or reproducing words in visible form including by electronic means such as facsimile transmission
- xvii) A reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind
- xviii) A reference to a day is to a calendar day, a month is to a calendar month and a year is to a calendar year
- xix) If a period of time is specified and dates from a given day or the end of an event or act, it is to be calculated inclusive of that day
- xx) If a date is stipulated for payment of for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day

- xxi) A reference to a monetary amount means that amount in Australian currency
- xxii) A reference to time means the time observed by the general community from time to time in Western Australia.

## 2. Conditions

### 2.1 Submission of Offer

- a) Any Offer which:
  - i) Is not submitted before the Closing Time
  - ii) Is incomplete at the Closing Time
  - iii) Is not submitted in accordance with the provisions of clause 1.2 in Part A of the Request,may be excluded from consideration, unless the Respondent can provide conclusive evidence of mishandling of the Offer.
- b) When submitting the Offer electronically, the Respondent should ensure that the electronic copy of the Offer comprises two files. The first should be a **single .pdf** file addressing all required areas within Part B, and any supplemental information the Respondent wishes to provide, to allow the Principal to evaluate the response. The second file should be the **returned .xls 'Schedule 3 – Pricing Submission'** file, appropriately completed.
- c) The Offer must be received in full by the Principal prior to the Closing Time. In submitting the Offer electronically, the Respondent agrees that:
  - i) Receipt of the Offer will be determined by the date and time shown on the electronic tender lodgement service receipt issued or, if no receipt is issued, the date and time which the Principal's computer records that the Offer was received
  - ii) If the electronic copy contains a virus then, notwithstanding any disclaimer made by the Respondent in respect of viruses, the Respondent must pay to the Principal all costs incurred by the Principal arising from, or in connection with, the virus
  - iii) Lodgement of electronic files may take time and the Respondent must make its own assessment of the time required for full transmission of its Offer
  - iv) The Principal will not be responsible in any way for any loss, damage or corruption of the electronic copy of the Offer
  - v) If the electronic copy of the Offer becomes corrupted, illegible or incomplete as a result of transmission, storage, encryption or decryption, then the Principal may request the Respondent to provide another copy of the Offer electronically
  - vi) If the Principal requests the provision of another copy of the Offer, then the Respondent must:
    - 1) Provide the copy in the form or forms requested within the period specified by the Principal
    - 2) Provide a statutory declaration that the copy is a true copy of the Offer which was electronically submitted by the Respondent and that no changes to the Offer have been made after the initial attempted electronic submission

- 3) Provide a copy of the electronic tender lodgement service receipt for the initial electronic submission.
- d) An Offer is not assignable by the Respondent without the prior written consent of the Principal.
- e) If an Offer is submitted by a consortium of two or more persons either by way of joint venture, partnership or otherwise, the Offer is binding on those persons jointly and severally.
- f) An Offer is, upon submission, the absolute property of the Principal and will not be returned to the Respondent. Nothing in this provision affects the intellectual property rights of the Respondent in the Offer, except that the Principal may make such copies of the Offer as required for the proper evaluation of the Offer.

## 2.2 Cancellation and Variation

- a) The Principal reserves the right, at any time and from time to time, to cancel, vary, supplement, supersede or replace the Request or any part of the Request prior to the Closing Date.
- b) If the Principal cancels, varies, supplements, supersedes or replaces the Request, then:
  - i) The Principal will advise each Respondent that the Request has been cancelled, varied, supplemented, superseded or replaced
  - ii) The Respondent shall not have any recourse against the Principal whatsoever including for claims for any costs or expenses incurred up to and including the date that the Request or any part of the Request is cancelled, varied, supplemented, superseded or replaced.

## 2.3 Principals Rights

- a) The Principal is not obliged to accept the Offer containing the lowest Offered Price.
- b) The Principal is under no obligation to accept any Offer and may reject any Offer or all Offers, at its absolute discretion, including:
  - i) If an Offer fails to comply with these Request Conditions
  - ii) If an Offer fails to comply with any of the requirements set out in Part B of the Request
  - iii) If an Offer contains information or representations that are false or misleading
  - iv) If anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Respondent to another person, including in respect of a Respondent which is a body corporate, if there is a change in control of the Respondent within the meaning of the *Corporations Act 2001* (Cth)
  - v) In respect of a Respondent which consists of a consortium, if there is a change of membership of the consortium members
  - vi) If the Principal decides to cancel the Request due to changes of policy or for commercial reasons.
- c) After the Closing Time, the Principal may:
  - i) Request additional information from the Respondent in relation to the content of the Offer for the sole purpose of clarifying the Offer
  - ii) Request information from the Respondent regarding the financial capacity of the Respondentand if so requested, the Respondent must promptly provide such information to the Principal.

- d) In evaluation an Offer, the Principal may take into account any information regarding the Respondent that the Principal has in its possession or receives from any source, including information about the past or current performance of the Respondent under any other agreement, arrangement or dealing between the Respondent and a Public Authority.
- e) The Principal reserves the right to conduct site visits as it deems appropriate.

## **2.4 Selection of Preferred Respondent**

- a) The Principal may select, but is not obliged to select, one or more Respondents as a preferred Respondent.
- b) Selection as a preferred Respondent does not confer any rights on a preferred Respondent and the Request Submission Conditions, including clause 2.3, continue to apply until such time as a Contract is awarded or the Request is terminated.
- c) The Respondent agrees that, if it is selected as a preferred Respondent, then:
  - i) Its Offer will remain open for acceptance by the Principal at any time prior to the expiry of the Offer Validity Period
  - ii) The Principal may choose to negotiate any aspect of the Offer
  - iii) The Principal may request the Respondent to provide a performance guarantee, a bank guarantee or some other form of security on terms and conditions acceptable to the Principal.
- d) At any time during the negotiations, either the Principal or a preferred Respondent may terminate the negotiations for any reason.
- e) If the Principal does terminate negotiations, the Principal may:
  - i) Accept the Respondent's original Offer
  - ii) Select and then negotiate with any other Respondent as a preferred Respondent, in accordance with this clause 2.4
  - iii) Decline all Offers and either re-tender or seek an alternate procurement process.

## **2.5 Discretion**

- a) Whenever the consent of the Principal is required under the Request, that consent may be given or withheld by the Principal, at its absolute discretion and may be given subject to such conditions as the Principal may determine.

## **2.6 Agreement with these Request Conditions**

- a) In submitting an Offer, the Respondent is deemed to have read and agreed to these Request Submission Conditions.

## **2.7 Agreement by Respondent**

- a) In submitting an Offer, the Respondent agrees that:
  - i) **Information True and Correct** – All information in its Offer and all Offer information is true and correct at the time of its submission
  - ii) **Relies on Own Enquiries** - Other than in respect of information provided by the Principal to the Respondent in writing, it relies entirely on its own enquiries in relation to all matters in respect of the Request, the Request Conditions and General Conditions of Contract

- iii) **Understood Request** – It has examined and understood the Request, each addendum issued under the Request, the Request Conditions and General Conditions of Contract and any other information available to the Respondent in respect of the Request
- iv) **Made Reasonable Enquiries** – It has examined all information relevant to the risks, contingencies and other circumstances having an effect on its Offer which is obtainable by the making of reasonable enquiries, which enquiries the Respondent has made
- v) **Does Not Rely on Warranties** – Other than in respect of information provided by the Principal to the Respondent in writing, it does not rely on any warranty or representation of the Principal or any person actually or ostensibly acting on behalf of the Principal
- vi) **No Secret Commission** – It has not paid or received and will not pay or receive any secret commission in respect of the Request
- vii) **No Collusion** – It has not colluded and will not collude with any other person in respect of the Request
- viii) **No Inflation or Deflation of Offered Price** – The Offered Price is not inflated or deflated to advantage another Respondent
- ix) **No Unlawful Arrangement** – It has not entered and will not enter into any unlawful arrangement with any other person in respect of the Request
- x) **No Improper Influence** – It has not sought and will not seek to influence any decision in respect of the Request by improper means
- xi) **Own Cost and Expenses** – It will pay its own costs and expenses in connection with the preparation and submission of its Offer, and any discussions, enquiries or negotiations with, or provision or consideration or further information to the Principal, whether before or after the submission of Offer, irrespective of whether its Offer is accepted or not.

## 2.8 Withdrawal of Offer

- a) The Respondent may withdraw its Offer at any time prior to acceptance of its Offer, by notifying the Principal in writing.

## 2.9 Offer Validity Period

- a) Unless the Respondent withdraws its Offer under clause 2.8, the Respondent agrees that its Offer will remain open for acceptance by the Principal for the Offer Validity Period.
- b) The Offer Validity Period may be extended or further extended by the Principal by advising each Respondent in writing at any time or times.

## 2.10 Award of Contract

- a) Upon selection of a recommended Respondent and the successful conclusion of any negotiations, the Principal will proceed to Award of Contract by notifying all parties involved as to the outcome.
- b) The successful Respondent may be required to execute an Agreement with the Principal comprised of Part B of these Conditions, and the relevant Schedules from the Request document.
- c) Failure to return a signed copy of the executed Agreement to the Principal within 10 Business Days may constitute grounds for the Principal to terminate the contract, and award to the next Value for Money Respondent.



## 2.11 Disclosure of Other Information

- a) The Respondent agrees and acknowledges that its Offer and its Offer Information are subject to the *Freedom of Information Act 1992 (WA)* and may also be disclosed by the Principal under a court order or upon request by Parliament or any committee of Parliament or if otherwise required by law.
- b) By submitting an Offer, the Respondent releases the Principal from any liability whatsoever for any loss, injury, damage, liability, costs or expenses resulting from the disclosure of its Offer and its Offer Information under this clause by the Principal.
- c) The Respondent agrees and acknowledges that the powers and responsibilities of the Auditor General for the State under the *Financial Management Act 2006* and the *Auditor General's Act 2006* are not affected in any way by the Request.
- d) Subject to this clause and to the provisions of the *Financial Management Act 2006*, the *Auditor General's Act 2006* and the *Local Government (Functions and General) Regulations 1996*, the Principal will not make public any part of the Offer or any Offer Information that the Respondent expressly and reasonably nominates in its Offer as confidential. However the Principal may require the Respondent to withdraw any claim to confidentiality in respect of any part of the Offer or any Offer Information as a condition of acceptance of the Offer.

## 2.12 Conflict of Interest

- a) The Respondent must, prior to any acceptance of its Offer by the Principal, disclose to the Principal any information that is or might be relevant to determining whether an actual, potential or perceived conflict of interest exists or might exist in relation to the Request or the performance of the Contract (if awarded) by the Respondent.
- b) The Principal may, at its absolute discretion, accept or reject the Respondent's Offer if the Principal considers that the Respondent has, or could reasonably be considered to have, an actual, potential or perceived conflict of interest exists or might exist in relation to the Request or the performance of the Contract (if awarded) by the Respondent.

## 2.13 No Bribe, Inducement or Offer of Employment

- a) The Respondent must not, without the prior written consent of the Principal, directly or indirectly approach or communicate with any officer or employee of the Principal having any connection or involvement with the Request, with respect to:
  - i) An offer of employment
  - ii) Availability of employment,with the Respondent or any related entity.
- b) The Respondent must not directly or indirectly offer a bribe, gift or inducement to any officer or employee of the Principal in connection with the Request.

## 2.14 Use of Lobbyists

- a) The Respondent warrants and represents to the Principal that any “lobbyist” (as that term is defined in Public Sector Commissioner’s Circular 2009-013 “Public Sector Commissioner’s Circular”) which can be found at

[www.publicsector.wa.gov.au/AgencyResponsibilities/PSCCirculars](http://www.publicsector.wa.gov.au/AgencyResponsibilities/PSCCirculars)

that it or any of its officers, employees, agents or sub-contractors has employed, engaged or has otherwise involved, directly or indirectly, in connection with the Request, is duly registered as a “lobbyist” in terms of that Public Sector Commissioner’s Circular and has fully complied with its obligations under it.