

CITY OF LAUNCESTON

GENERAL CONDITIONS OF TENDERING

JANUARY 2019

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1. DEFINITIONS

"Alternative Tender" has the meaning given to it by Clause 3.3.

"Conditions of Tender" means this document which forms part of the overall Tender Package.

"Conforming Tender" means a Tender submission that complies with 3.1.

"Contact Person" means the person stated in Section D of the Tender Package.

"Contract" means the agreement formalised as a result of finalisation of the Tender process.

"Council" means the Launceston City Council trading as the City of Launceston.

"Councillors" means the elected representatives of the Council, including the mayor.

"Intellectual Property Rights" means all copyright, patent rights, trademarks, registered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields.

"Non-Conforming Tender" has the meaning given to it by Clause 3.2.

"Principal" means the City of Launceston.

"Tender Document" means the Tender Package in its entirety.

"Tender" means a returned submission.

"Tender Package" means the entire document inclusive of these conditions of Tender.

"Tender Return Schedules" mean the respective forms (schedules) in Section C to be returned as the tender submission.

"Tender Evaluation Panel" means the panel appointed to evaluate the Tender Package.

"Tenderer" means the party proposing to lodge the Tender Package.

2. GENERAL

All Tenderers, prior to submitting their Tender Package, are expected to become acquainted with the nature and extent of the Tender and the services to be undertaken, and make all necessary examinations, investigations, and inspections.

No claims arising from a failure to take any such actions will be considered and the Council does not accept any responsibility if a Tenderer fails to make its own enquiries, interpretations and conclusions when preparing its Tender.

Tenderers are required to familiarise themselves with all legislative and regulatory requirements relating to the services and the elements necessary to perform the services tendered for. Tenderers must also make themselves familiar with the clauses and provisions within Council's Code for Tenders and Contracts (Document 11-HLPr-005. Available on the Council website). All City of Launceston Tenders are issued in accordance with the stated Code for Tenders and Contracts.

Tenderers must form their own assessment of the amount of services, materials, plant and all other items necessary to perform the proposed Contract, and of the conditions, difficulties and hazards that are associated with the performance of the Contract.

2.1. Tender Package

The Tender Package has the following in the order of precedence:

- a) Section A Conditions of Tendering;
- b) Section B Specification;
- c) Section C Tender Return Schedule; and
- d) Section D Contract Document
- e) Design Drawings, and LGAT Standard drawings, where applicable

2.2. Type of Contract

This is a scheduled fee for service contract, with provision for additional payment for works requested by the City of Launceston and undertaken by the Contractor.

2.3. Work to be Performed

The services to be provided are described in Section B, Specifications. Tenderers are required to supply all plant, equipment, materials and consumables required to undertake works as specified.

2.4. Tenderer to be Informed

Tenderers shall, prior to submitting their Tender Package, become acquainted with the nature and extent of the Contract and the Services to be undertaken, and make all necessary examinations, investigations, inspections and deductions. No claims arising from a failure to take any such actions will be considered and the City of Launceston does not accept any responsibility if a Tenderer fails to make its own enquiries, interpretations, deductions and conclusions when preparing its tender.

2.5. Industrial awards

All Contractor's and Suppliers ("Service Provider") are required to comply with the provisions of all applicable legislation, industrial awards, and approved industrial agreements that apply to their operation and the type of work being supplied. The City of Launceston expects that workers supplied by the service provider plus all creditors receive all entitlements due to them as required by the applicable legislation / industrial instruments / agreements.

2.6. Enquiries

Any enquiries regarding the services specified in the Tender Package should be directed to the nominated contact person(s) as listed in Section D of this document. No statement made by the nominated contact person(s) should be construed as modifying these Conditions of Tendering or any other Tender Package, unless confirmed in writing by the nominated contact person(s) and attached to Section D Appendix 2.

2.7. Tender Briefing

A prospective Tenderer may request a briefing meeting to discuss aspects of this tender by contacting the nominated contact person.

2.8. Scope of Tender

The Tender shall be for the whole of the works unless otherwise stated in the Section D of the Tender Package.

2.9. Signing Tender Documents

The Tenderer shall sign the Tender Return Schedules in Section C, or if the Tenderer is a corporation, execute the tender in a manner binding the corporation. The Tenderer may attach to the Tender Return Schedules Return Schedules in Section C any additional documentation that it wishes to submit in support of its Tender.

Any Tender submitted shall be an irrevocable offer by the Tenderer to perform the contracted Services subject to the terms and conditions set out in these Conditions of Tendering.

2.10. Tenderer not to Solicit the Council and its Advisors

The Tenderer and its representatives, or any other parties must not interfere or attempt to interview or to discuss this tender with Councillors or employees of the Council, other than the nominated contact person(s). Lobbying from any parties in any form (including public media or social media platforms) from Suppliers, Councillors or employees can result in the tenderer being excluded from the tender. The City of Launceston reserves the right to reject any tender submitted by a Tenderer which contravenes this Clause.

2.11. In House Tendering

There will be no in-house Tender submitted by the Council for this Contract.

3. TENDER PACKAGE PREPARATION AND LODGEMENT

3.1. Conforming Tenders

A Conforming Tender means a Tender which:

- (a) Is in the form required by the Tender Package
- (b) Has completed and executed all the Tender Return Schedules relevant to the offer, and in the manner required; and
- (c) Complies with the lodgement requirements
- (d) Adheres closely to the project detail and required specifications

3.2. Non-Conforming Tenders

- (a) Acknowledgement by the principal that it has received a Tender does not imply that the Tender/s has been accepted as a Conforming Tender
- (b) Subject to subclause 3.2(c), Non-Conforming Tender will not be considered
- (c) The Principal may, in its sole discretion, consider a Non-Conforming Tender after;
 - (i) Taking into account the nature and extent of the non-conformance
 - (ii) Considering whether a Conforming Tender has been submitted by another Tenderer, or
 - (iii) Considering whether the acceptance or rejection of a Non-Conforming Tender creates a corresponding advantage or disadvantage to the Tender process

3.3. Alternative Tenders

An alternative tender is one which complies with the above conditions for a conforming tender, but does not comply with the detailed scope of work. However, it complies with the intent, and meets the objective or the desired outcome of the tender.

The Council will deem any Tender submitted with attached conditions, or qualifications, as an alternative tender since it represents a variation from the issuing document standards and terms.

To be eligible for consideration, alternative tenders must contain all necessary technical information, including costings and should identify all the proposed variations from the tender document. The alternative tender will only be considered if it is suitable and acceptable for the proposed work.

It is not a requirement to submit a conforming tender with the alternative tender, however alternative Tenders need to be clearly identified as such, and acceptance of any alternative tenders must be consistent with the requirements as advertised.

3.4. Tender Lodgement

All Tenders should be lodged with the City of Launceston Tenderlink portal using <https://www.tenderlink.com/launceston>, or another nominated electronic system. No Tenders will be presented in hard copy format to the City of Launceston physical address, unless it is bulky supportive information that cannot be lodged electronically via Tenderlink. Tenders not received via the electronic Tenderlink portal will be deemed as Non-Conforming and considered in accord with clause 3.2. All Tender Packages should be clearly identified clearly and marked: **"CD*** Current Tender for Work, and submitted by the nominated closing time.**

3.5. Late Tenders

Tender Packages received after the closing date and time will not be considered by the Council.

3.6. Number of Copies of Tenders

Tenderers are required to lodge one only original Tender Package and all supporting documentation.

3.7. Ownership of Tenders and Tender Information

Tender Packages lodged by the Tenderer shall become the property of the Council.

3.8. Acknowledgement by Tenderer

The Tenderer acknowledges that:

- (a) The Council makes no representations and offers no undertakings in issuing this Tender
- (b) The Council is not bound to accept any particular Tender
- (c) The Council with notice, may suspend, vary, postpone, terminate or abandon the tender process at any time at its sole discretion

- (d) The Council may invite one or more Tenderers to supply further information, to attend a conference, interview or make a presentation as a part of their Tender Package submission
- (e) The Council reserves the right to negotiate further with any Tenderer/s and in doing so is in no way an indication that they are the preferred Tenderer unless this is explicitly conveyed.
- (f) The Tender Evaluation Panel or the Council may undertake 'due diligence' checks, including, but not limited to, verifying references and/or referees, product or service performances and undertaking company searches and credit checks
- (g) The Council will not be responsible for any costs or expenses incurred by a Tenderer arising in any way from the preparation and submission of Tender Packages
- (h) The Council accepts no responsibility for a Tenderer misunderstanding or failing to respond correctly to this tender

4. ACCEPTANCE OF TENDER

The successful Tenderer will be notified in writing of the acceptance of its tender. Unsuccessful Tenderers will also be informed of the outcome of the tender process.

4.1. Validity Period

Tender prices or rates shall remain valid for a period of 90 days from the date of closing of Tenders.

5. CONTRACT

The successful Tenderer will be invited to enter into a Contract with the Council in accord with the Council's procurement policies, procedures, and terms of contract as specified and negotiated.

6. USE OF SUBCONTRACTORS

Where a Tenderer proposes to provide any part of the services using resources from organisations other than the Tenderer itself, substantial information relating to the contractual arrangements for such resources must be detailed in the Tender, together with information on the relevant experience of such other organisation. Failure to provide such information may result in the returned Tender being excluded from further consideration. Tenderers will be required to ensure that any subcontractors engaged;

- (a) Satisfy the terms and conditions of the issued Tender Package, and adhere to all relevant conditions as outlined to the principal contractor
- (b) Have stringent safety standards and procedures in place and observe them
- (c) Conduct their business operations in a legal and ethical manner, including paying their respective employees and creditors correctly as per industry award standards

7. PROBITY OF TENDER PROCESS

A "Statement of Conformity" document is included in the Tender Return Schedules which addresses compliance with the Conditions of Tendering. This document must be made and returned as part of the Tender. Tenderers must ensure that, when preparing and submitting a Tender that they adhere to principles of ethical behaviour and fair dealing.

Tenderers must avoid situations where the tender process is wrongfully influenced by other external interests, such as a relationship or affiliation they may have with a City of Launceston officer.

Should any Tenderer consider that the tender process has failed to show fairness in consideration as a Tenderer, or that the process has been prejudiced in any way affecting the tenders or the evaluation, the Tenderer must notify in writing the alleged failure to the nominated contracts superintendent or the City of Launceston management.

Such notification must outline the issues in dispute, the impact upon the Tenderer's interests, any relevant background information and the outcome desired for review.

8. DISPUTE RESOLUTION

- (a) Should any Tenderer consider that the tender process has failed to fairly consider a Tender, the Tenderer must immediately and in writing notify the alleged failure to the Contact Person
- (b) Within 10 Business Days the Contact Person will contact the Tenderer to discuss the issue raised in the notice
- (c) If the Contact Person does not respond within the prescribed time, or the Tenderer is dissatisfied with their discussion with the Contact Person, the Tenderer may contact the Manager Strategic Procurement

9. PROVISION OF INFORMATION BY TENDERER

9.1. Tender Return Schedules and Evaluation Information

Tenderers are required to complete the Tender Return Schedules in Section C and submit these as part of their Tender for evaluation. Tenderers may submit additional information in support of their Tender. The Council reserves the right to clarify with any Tenderer the contents of any information.

10. TIMING OF TENDER PROCESS

| | |
|---|----------------|
| On Site Tender Briefing | (As Specified) |
| Opening and Reviewing of Tender Packages | |
| Consideration of recommendation and decision by Tender Review Committee | |
| Award of Contract (indicative only) | |
| Contract to be finalised and signed. | |

11. CONFIDENTIALITY

11.1. Control of Confidential Information

Subject to this clause 10, the Council and Tenderers must maintain effective systems to protect Confidential Information.

Neither may:

- a) Use Confidential Information for any purpose other than the performance of that person's obligations under the Contract or in the assessment of a tender.
- b) Disclose (and must ensure that its employees do not disclose) Confidential Information to any third party, except in accordance with the procedure set out in this Clause.
- c) Allow its employee's access to Confidential Information without ensuring that those employees are aware of and comply with these systems for the protection of Confidential Information.
- d) The City of Launceston or a Tenderer may disclose Confidential Information to a third party only where that entity has obtained the prior written approval of the other party to such disclosure. This approval must not be unreasonably withheld if the other party has procured a confidentiality undertaking in the same terms as this clause in respect of the information from such third party.

11.2. Information Provided by Council

Information provided in this Request for Tender or imparted to any Tenderer as part of the tendering process is confidential and shall not be used by the Tenderer for any other purpose, or distributed to, or shared with any other person or organisation. If the Tenderer does not accept this condition then it must return the Tender Package within two (2) days to the nominated contact person.

11.3. ISD Construction Preliminaries

Where the Tender Package document makes reference to "ISD Construction Preliminaries", these reference documents apply and must be reviewed and considered along with all other Tender related documents. The ISD Construction Preliminaries are ONLY applicable to Tender documents that highlight the need for them and are not a council-wide requirement.

11.4. Information Provided by Tenderers

Tenderers should note that the name of each successful Tenderer will be presented in Council reports and shall be made public.

Tenderers should note that any information submitted within tenders may be made public if an application under the *Right to Information Act 2009* is received, and is upheld. The Council reserves the right to disclose any or all information provided by Tenderers where disclosure is:

- (a) Required or compelled by any order of a Court
- (b) Required or compelled by any law

- (c) Required or compelled by notice validly issued by any Authority
- (d) Necessary for the conduct of any legal proceedings
- (e) Necessary for the provision of advice by the Council's legal advisers, accountants or other consultants
- (f) Necessary for the evaluation of this Tender

11.5. Intellectual Property Rights

- (a) By submitting a Tender, the Tenderer is deemed to have granted the Principal a right to reproduce the Tender in whole or in part and to authorise any other act or omission in relation to the Tender for the purposes of exercising its rights, or in carrying out its functions and obligations under these conditions of Tender
- (b) The Tenderer indemnifies the Principal against all costs (including legal costs), expenses, losses (including specified loss) or damages incurred or suffered by the Principal in connection with a claim by a third party alleging a breach of Intellectual Property Rights

12. EVALUATION

The council may use either a weighted attribute scoring method, a numerical scoring method, or alternatively any other scoring methodology which will consider the included evaluation criteria as stated in the tender document. The scoring methodology used will be stated in the specific Tender document, plus the criteria attributes, and any weightings if applicable.

12.1. Evaluation Panel

An evaluation panel comprising of a minimum of 3 Council officers or Council representatives will assess the submissions in accord with the published evaluation method and criteria.