

# General Conditions of Tender

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## 1. Definitions

In Section A, Section B, and Section C of the Tender Package

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

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

"**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.

"Contractor" means the contracted Vendor undertaking the Services.

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

"**Councillors**" means the elected alderman of the Council, including the mayor.

"Incident" means an accident, injury, property or environment damage.

"**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.

"**Services**" means the services and requirements outlined in Section B

"**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 Review Committee**" means the committee made up of elected councillors to review a Tender recommendation.

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

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

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

"**Work Health and Safety Management System**" means a structured systematic means for managing work health and safety risks and maintaining a safe work environment.

## 2. General

This Tender is issued in accord with the clauses and provisions within Council's Code for Tenders and Contracts (Document 11-Plx-004 available on the City of Launceston Website). In addition to the Code, these Conditions of Tendering outline the conditions applicable for all parties to the Tender.

### 2.1 Tender package

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

- a) Section A General Conditions;
- b) Section B Specification;
- c) Section C Tender Return Schedules; and
- d) Section D Contract Document.
- e) Section E Drawings (If applicable)

### 2.2 Type of contract

Unless extensions are allowed, City of Launceston Tenders are issued as one-off contracts, signed with the successful supplier.

### 2.3 Scope of work to be performed

The services to be provided are described in the Tender Package Section B, Specifications. Contractors are required to supply all plant, equipment, materials and consumables required to undertake works as specified. All materials and equipment supplied and engaged by the contractor, must be approved, licensed, registered, electrically tagged, certified, in good working condition, of legal possession and appropriate for purpose, respective to each equipment item and its use of.

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

## **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 Supplier fails to make its own enquiries, interpretations, deductions and conclusions when preparing its Tender.

Contractors are required to familiarise themselves with all legislative and regulatory requirements relating to the Services and the elements necessary to perform the Services, which may include Working with Vulnerable people registration.

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

## **2.5 Industrial awards and commercial agreements**

All Contractors are required to comply with the provisions of all applicable legislation, industrial awards, and approved industrial agreements that apply to their operations and the type of work being supplied. The City of Launceston expects that all employees and creditors engaged by the supplier receive all entitlements due to them as required by the applicable legislation/ industrial instruments and commercial agreements.

## **2.6 Infrastructure and Assets Network construction preliminaries**

Only when referred to in the relevant Tender Package, Section B Specifications as Tender requirements, are the IAN Construction Preliminaries to be observed and followed. A list of the IAN, (Infrastructure Assets Network) Construction Preliminaries are to be found on the City of Launceston website.

## **2.7 Enquiries**

Any enquiries regarding the services specified in the Tender Package should be directed to the Council via the Tenderlink forum.

## **2.8 Tender briefing**

On-site Tender briefing meetings may be scheduled by arrangement. A briefing can be requested using the Tenderlink forum.

## **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 General Conditions of Tender.

## **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, Aldermen 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.

### 3. Tender 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

Acknowledgement by the principal that it has received a Tender does not imply that the Tender/s has been accepted as a Conforming Tender. The council will deem any Tender submitted with attached conditions, qualifications, plus any commercial or contract departures as Non-Conforming, since it represents a variation from the issued requirements, standards and terms within the document.

- (b) Subject to subclause 3.2(c), Non-Conforming Tenders 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

- (a) Complies with the intent, objectives and the above conditions for a conforming Tender, but does not comply with the detailed scope of work specifications as requested
- (b) An Alternative Tender proposal may be submitted if it is clearly identified as an "Alternative Tender" in the relevant section, and identifying the areas where it fails to comply with the specified requirements.
- (c) A Tender submitted which meets the Principal's requirements in an alternative and practical manner, taking into account the totality of the requirements, must include supplementary technical information, together with associated prices, which demonstrates that the alternative offer is suitable and will fully achieve all the specified requirements to the sole satisfaction of the principal.
- (d) The principal reserves the right in its absolute discretion to either consider Alternative Tender's on their merits, or not to consider them further.
- (e) It is not a requirement to submit a conforming Tender with an alternative offer.

#### 3.4 Tender lodgement

All tenders should be lodged with the City of Launceston Tenderlink Portal via the electronic tender box at [www.tenderlink.com/launceston](http://www.tenderlink.com/launceston) prior to the advertised closing date and time. Tender closing date and times are specified in each individual Tender Package. Tenders received via other methods will be deemed as Non-Conforming and considered in accord with this section 3.2.

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.

Any such hard copy supplementary information should be clearly identified and marked with the relevant Tender Package Title and Contract Number and submitted by the nominated closing time, to the City of Launceston Customer Service Department.

#### 3.5 Late tenders

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

#### 3.6 Ownership of tenders and tender information

Tender Packages lodged by the Tenderer shall become the property of the City of Launceston.

### **3.7 Acknowledgement by tenderer**

The Tenderer acknowledges that:

- (a) The City of Launceston makes no representations and offers no undertakings in issuing this Tender
- (b) The City of Launceston is not bound to accept the lowest or any particular Tender
- (c) The City of Launceston, with notice, may suspend, vary, postpone, terminate or abandon the tender process at any time at its sole discretion
- (d) The City of Launceston 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, and in doing so is in no way an indication that they are the preferred or the successful Tenderer
- (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 or successful Tenderer unless this is explicitly conveyed.
- (f) The Tender Evaluation Panel 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 City of Launceston, in accord with the City of Launceston procurement policies and procedures. It is proposed that the contract terms attached in the Tender Package, Section D plus any appendices will form the general terms of a future agreement, which will also include the requirements as outlined throughout the Tender Package. Although the City of Launceston may propose further changes, a future agreement will also incorporate the specifications and related documents which form part of the contract.

### **6. Use of sub-contractors**

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/subcontractors and creditors correctly as per industry award standards and/or agreements.
  - (i) In such cases where it is found that the main or sub-contractor is not paying it's creditors entitlements as above, and upon providing notice to that effect, the City of Launceston reserves the right to pay the affected supplier directly an amount owed. The amount paid will then be deducted from either the next contractor's payment claim or from the security deposit held.
- d) display conduct to members of the public in a similar manner to the City of Launceston Code of Conduct.

## 7. Probity of tender process

A “Statement of Conformity” schedule is included in the Tender Return Schedules which addresses compliance with the entire Tender Package. This schedule must be acknowledged 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 General Manager, Organisational Services.

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

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 General Manager Organisational Services. Within 10 Business Days contact will be made with the Tenderer to discuss the issue raised in the notice

## 9. Provision of information by tenderer

Tenderers are required to complete all the Tender Return Schedules provided in each Tender Package, and submit these as part of their Tender for evaluation. Tenderers may submit additional information in support of their Tender.

The City of Launceston reserves the right to clarify with any Tenderer the details of any information, and if any significant errors are found that potentially will affect the Tender outcome, clarification will be sought from either the particular Tenderer, or alternatively seek clarification and confirmation from all Tenderers depending on the clarification required. All such clarification requests shall be conducted with due recognition of any applicable, regulations, codes and these General Conditions.

Any such returned clarification information will be considered along with the original Tender submission.

## 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.	

Any changes to the above timetable will be communicated in writing to those who have received the document, and if any changes are to be made after the closing date and time, then communication will only be sent to those suppliers who have made a submission, and similarly, if there is a need to alter the tender specification document once it has been issued, an addendum will be sent to all Suppliers that have been issued with the tender specification document.

## 11. Confidentiality

### 11.1 Control of confidential information

Subject to this clause 11, the City of Launceston 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.

### 11.3 Information provided by tenderers

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

Tenderers should note that any information submitted within tenders may be made public even if marked commercial in confidence if an application under the Right to Information Act 2009 (the "Act") is received. The Council's Right to Information officer may be required undertake an investigation as required by the Act and make full disclosure of all related documentation.

The City of Launceston reserves the right to disclose any or all information provided by Contractors 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.

### 11.4 Intellectual Property Rights

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

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

Each Tender Evaluation criteria is tailored to the specific Tender, yet the below is a typical outline of what is advertised. The tender which is considered (in all the circumstances) the most advantageous to Council will be accepted. All Tenders shall be checked for a stage one (1) compliance review. Tenders which comply will then be assessed according to stage two (2) evaluation.

### Stage 1



All Tenderers will need to return all the schedules as required in the Tender Package. Tenders with missing return schedules will be deemed as Non-Conforming and treated accordingly. The City of Launceston will only accept submissions wherein all the mandatory information is provided or can be provided. Mandatory requirements are

- Completeness of Tender. Including all return schedules.
- Tender Conformity. (Schedule 2)
- Acknowledging and accepting the Workplace Health and Safety statement.
- Ability to provide relevant insurances and contract security. (if applicable)

**Stage 2**

All submissions reaching Stage 2 will be evaluated against the following criteria

Evaluation Criteria	Weighting
Non-Price	
(The Evaluation Criteria and respective weightings are customized for each Tender Package)	
Price	
<b>TOTAL</b>	<b>100%</b>

**12.1 Evaluation panel**

An evaluation panel comprising of a minimum of 3 Council officers or appointed Council representatives will assess all conforming submissions. The evaluation will take place as determined by the evaluation panel and their respective interpretation of the submissions will be final and absolute. All evaluation panel members sign a Conflict of Interest Declaration and Confidentiality Agreement.

**12.2 Pricing and Evaluation Method**

The quoted sum (Price) is scored by a mathematical calculation, and the (Non Price Criteria) is scored numerically and weighted accordingly. To balance the price and non-price proportion, the evaluators will score the Non-Price attributes similarly with a score of 10 for the best supplier option of the submissions.

**13. Tender conclusion and recommendation**

Before the awarding of any Tenders occur, a recommendation report is presented to the Tender Review Committee, a sub-committee of the elected Councillors to review that due process has been observed and adherence to the Councils Codes and Procedures has taken place. Following this review and subsequent approval, the successful and unsuccessful suppliers are notified. All such notifications are conveyed in writing.

***PURPOSE:***

The General Conditions of Tender explain how the Tender will be conducted and the obligations of all parties.

***SCOPE:***

The General Conditions of Tender form a part of every Tender issued by City of Launceston.

***RELATED POLICIES & PROCEDURES:***

Code for Tenders and Contracts 11-Plx-004  
Procurement Policy 11-Plx-001