



## Conditions of Tendering

(Edition 5; October 2008) ©

### CONTENTS

- |     |                            |     |  |
|-----|----------------------------|-----|--|
| 1.  | INTERPRETATION             | 12. | OPENING OF TENDERS                         |
| 2.  | TENDERER STATUS            | 13. | ASSESSMENT AND ACCEPTANCE                  |
| 3.  | TENDERER TO INFORM ITSELF  | 14. | NON CONFORMING TENDERS                     |
| 4.  | OFFER                      | 15. | ALTERNATIVE PROPOSALS                      |
| 5.  | CONDITIONS OF CONTRACT     | 16. | PRE-TENDER MEETING                         |
| 6.  | ACKNOWLEDGMENT BY TENDERER | 17. | ECOLOGICALLY SUSTAINABLE DEVELOPMENT       |
| 7.  | CONFIDENTIALITY            | 18. | INDUCTION TRAINING                         |
| 8.  | COLLUSIVE TENDERING        | 19. | LOCAL GOVERNMENT (GENERAL) REGULATION 2005 |
| 9.  | CANVASSING SUPPORT         |     |  |
| 10. | LEVIES & TAXES             |     |  |
| 11. | SUBMISSION PROCEDURE       |     |  |

The Contracts Panel of the Hunter Region Organisation of Councils  
in association with Gosford City Council

## CONDITIONS OF TENDERING

### RULES GOVERNING THE CONTENT AND SUBMISSION OF TENDERS

#### 1. INTERPRETATION

In these "*Conditions of Tendering*" and elsewhere, except where the context requires otherwise:

"**Council**" means the Council of the Local Government area issuing this request for tender (the "*Principal*") and where the context permits, includes its authorised delegates;

"**Day**" means business day, that is not Saturday or Sunday or public holiday for the Principal's employees;

"**non-conforming tender**" means a tender not lodged on the Schedules, or not containing all the information and documents required by these Conditions of Tendering, or otherwise not complying with any provision of this entire tender document;

"**offer**" means a proposal to enter into a legally binding contract with Council (refer to Clause 4);

"**person**" includes an individual, a corporation or a body politic;

"**Schedules**" means all schedules in addition to the Tenderer's Declaration contained in this tender document that are required to be completed by the Tenderer;

"**Specifications**" means the specifications contained in this tender document and includes description of the scope, technical references, drawings or consultant's brief;

"**tender**" includes prices, bids, quotations and consultant proposals and means the lodgment of a tender containing all requested information and accompanying documentation;

"**tender document**" means all of the following:  
The *Invitation to Tenders, Information to Tenderers* (or a covering letter), *Conditions of Tendering, General Conditions of Contract its Annexures, Special Conditions of Contract* and the *Specification and Drawings, Schedules* and any other specified documents.

In this Agreement, unless contrary intention appears, words importing a gender include any other gender and word in the singular includes the plural and vice versa.

#### 2. TENDERER STATUS

It is Council's practice to contract only with persons having appropriate financial assets and insurances. A Tenderer may also be required to provide evidence of its legal status.

If the Tenderer is a Trust or a Trustee of a Trust, then a full copy of the trust deed must be submitted with the tender.

It is also Council's practice to deal with entities that have an Australian Business Number (ABN) and are registered for GST.

#### 3. TENDERER TO INFORM ITSELF

The Tenderer shall bear all costs or expenses incurred by it in preparing and lodging a tender. In addition, no extras allowances, or additional or supplementary payments will be paid to the Tenderer as a result of neglect to have examined:

- (a) all parts of this tender document.
- (b) all information made available and/or all information obtainable by the making of reasonable enquiries.
- (c) the site and its surroundings including the location of all existing public utility services and the availability of services (where relevant to the project).
- (d) satisfied itself as to the correctness and sufficiency of its tender.

#### 4. OFFER

The lodgment of a tender in accordance with these "*Conditions of Tendering*" will constitute an offer to enter into and be bound by a contract.

The offer will be irrevocable and will remain open for acceptance by Council until the earlier of:

- (a) receipt by the Tenderer of a written notice or Purchase Order from Council (as per Clause 13); or
- (b) 60 business days from the Closing Date.

#### 5. GENERAL CONDITIONS OF CONTRACT

The general conditions of contract that will apply to the proposed contract are annex here to.

#### 6. ACKNOWLEDGMENT BY TENDERER

The Tenderer acknowledges and agrees that:

- (a) no variations or extras will be permitted to its submitted tender other than those provided at the request of, or with the written consent of Council in circumstances allowed by law;
- (b) it does not rely upon any verbal agreement or other conduct whatsoever by or on behalf of Council amending these "*Conditions of Tendering*";
- (c) Council will not be liable for any cost whatsoever incurred in preparing and submitting the tender;
- (d) none of these "*Conditions of Tendering*" will be waived, discharged, varied, amended, modified or released except by written notification by Council;
- (e) the Tenderer shall be responsible for any interpretation, deduction and conclusion made from the information made available and accepts full responsibility for any such interpretation, deduction and conclusions.

#### 7. CONFIDENTIALITY

Any information disclosed or obtained from either Council or the Tenderer about this tender must be kept strictly confidential except in the situations where disclosure is:

- (a) necessary in the process of assessing tenders, or where Council discloses all or part to any of its advisers and consultants or where Council publishes in its business papers, tender prices and other details of the tender as may be required and permitted by law.

- (b) under compulsion of law or it is already public knowledge, or
- (c) with the written consent of Council

## 8. COLLUSIVE TENDERING

Any participation in or condoning of a collusive activity by a Tenderer shall lead to the immediate disqualification of the Tenderer or of all Tenderers involved. Any Tenderer involved may be barred from tendering for any further contracts with Council. A collusive activity includes but is not limited to:

- (a) any agreement as to who should be the successful Tenderer;
- (b) any meeting of Tenderers to discuss their tenders prior to the submission to Council, unless Council is present at that meeting(s);
- (c) any exchange of information between Tenderers about their tenders;
- (d) any agreement for the payment of money or a reward or benefit for unsuccessful Tenderers by the successful Tenderer;
- (e) any agreement or collaboration of Tenderers to fix prices, rates of payment of industry association fees or conditions of contract;
- (f) the submission of a "cover tender", being a tender submitted as genuine but which has been deliberately priced in order not to win the contract.

## 9. CANVASSING SUPPORT

A Tenderer shall not directly or indirectly, discuss the tender with an elected member of Council, or canvass support from an employee of Council, at any time. Any Tenderer involved in such activity will result in their tender being rejected.

## 10. LEVIES & TAXES

A Tender shall:

- (a) where applicable, make allowance for the payment of payroll tax.
- (b) if the project is building and construction related, make no allowance for any long service levy payable to the Long Service Payments Corporation.
- (c) provide the tenderer's ABN and documented evidence of its registration for GST.

## 11. SUBMISSION PROCEDURE

### 11.1 Requirements

A tender must be in writing and be **COMPLETE**. It must contain the documents, information and details required including all *Schedules* and a *Tenderer's Declaration* filled out and properly signed. It must be lodged in the Tender Box, unless otherwise specified in the *Information to Tenderers*.

### 11.2 Tender Box Lodgement

The tender shall be either:

- (a) uploaded via the electronic Tender Box at [www.tenderlink.com/newcastle](http://www.tenderlink.com/newcastle) ; or

- (b) posted to the address of the Council shown in the tender document so that it is received not later than the deadline for the closing of tenders; or
- (c) placed in the physical Tender Box located at the address of the Council shown in the tender document not later than the deadline.

The tender shall be parceled and all its parts placed and delivered in a sealed envelope **clearly displaying the Contract Number and the project title**.

Council will only consider a late tender (received after the deadline) where the Tenderer is able to verify that the tender document was posted or lodged at a Post Office or other recognised delivery agency in sufficient time to enable the document to have been received by Council before the deadline in the ordinary course of business.

### 11.3 Tender Box Lodgement by Facsimile Machine

A tender may be transmitted to Council by facsimile machine. A tender may also be transmitted by other electronic means (see clause 11.2(a)) but **only if** that means of transmission is specified in the *Information to Tenderers*.

To maintain confidentiality, an authorised Council employee will place the tender in a sealed envelope and deposit it in the Tender Box.

Council will only consider a tender transmitted to it by these means if the transmission was received before the deadline for the closing of the tenders and is **COMPLETE**. Any delay or loss of data resulting from electronic equipment malfunction or unavailability is at the risk of the Tenderer.

### 11.4 Formal Confirmations

Where, in addition to a tender transmitted by facsimile machine, the Tenderer is required to submit a formal tender document, then Council is not obliged to consider the tender unless:

- (a) confirmation is shown that the formal tender documents and all other requisite essential information were posted or lodged at a Post Office or other recognised delivery agency before the deadline; and
- (b) those are received within such time as nominated in the *Information to Tenderers* lodgement method.

The original tender document shall be parceled and all its parts posted or lodged together in a sealed envelope **clearly displaying the Contract Number and the project title**. It shall be directed to the address of the Council shown in tender document.

## 12. OPENING OF TENDERS

Council will not open tenders until immediately after the closing time.

Where the contract value is greater than \$150,000:

1. the electronic Tender Box will be opened(downloaded) by a designated Council Officer in the presence of at least two persons appointed by the General Manager of Council.
2. the physical Tender Box will be opened by a designated Council Officer in the presence of at

least two persons appointed by the General Manager of Council. Any member of the public may attend this opening of tenders.

3. as soon as practicable after the tenders have been opened, the designated Council Officer must:
  - (a) prepare a tender list specifying, in alphabetical order, the names of the tenderers; and
  - (b) immediately display the list in a place where it can be readily seen by members of the public.

### 13. ASSESSMENT AND ACCEPTANCE

Tenders will be assessed against the assessment criteria shown in the tender document.

Once submitted, a tender may only be varied to provide further information by way of explanation or clarification or to correct a mistake or anomaly. Such variations shall not substantially alter the original tender.

Council will advise the successful Tenderer in writing by posting a "Notice of Acceptance of Tender" letter and/or a Purchase Order. For projects more than \$150,000, unsuccessful Tenderers will be advised in writing that their tenders have not been accepted.

In the event of acceptance of the tender, the "Notice of Acceptance of Tender", the Purchase Order, the "General Conditions of Contract" including "Annexures" to those conditions any "Special Conditions of Contract" (or "Preliminaries") and the "Specification" (including any drawings) and other documents including those submitted by the Tenderer will, until execution of a contract, constitute the only agreement between Council and the successful Tenderer.

### 14. NON-CONFORMING TENDERS

The Tenderer **MUST** submit a conforming tender.

If the Tenderer:

- (a) fails to properly complete the *Tenderer's Declaration* and all *Schedules*; or
- (b) includes terms and conditions which are contrary to the stated terms and conditions;

then at the discretion of Council, the tender shall be deemed to be non-conforming and will not be considered.

### 15. ALTERNATIVE PROPOSALS

Alternative proposals may be submitted in addition to a conforming tender. The alternative proposal must:

- (a) clearly set out the benefits of the proposal and how it differs from the conforming tender; and
- (b) not constitute a substantial variation but satisfy the basic commercial and performance objectives, technical and legal requirements.

### 16. PRE-TENDER MEETING

If nominated in the tender advertisement, a pre-tender meeting will be held on the date, at the time and place nominated. The Project Officer will be available at that time to answer any Tenderer's queries regarding the proposed contract. The meeting will be minuted and the minutes forwarded to all Tenderers and shall become part of the tender document.

If the meeting is designated as mandatory, a tenderer's failure to attend the meeting will result in its tender not being considered.

### 17. ECOLOGICALLY SUSTAINABLE DEVELOPMENT

As required under the Local Government Act 1993, Council is committed to Ecologically Sustainable Development (ESD) which aims at purchasing goods and services with the most beneficial environmental impact and through the use of contractors and suppliers who have a demonstrable commitment to ESD.

A tender may be rejected if a Tenderer is involved, or was at any time in the preceding 12 months involved in an activity in such a manner which is contrary to the principles of ESD and the potential cost of rejecting the tender is considered by Council to be acceptable having regard to the wider public interest in balancing value for money against promoting the principles of ESD.

In this clause:

"**Tenderer**" means any of the following:

- (a) the person submitting the tender;
- (b) the person which will perform the contract if the tender is accepted;
- (c) a 'parent', 'child' or 'sibling' entity (within the meaning of the Corporations Law) of the person submitting the tender;
- (d) a 'parent', 'child' or 'sibling' entity (within the meaning of the Corporations Law) of the person which will perform the contract if the tender is accepted.

"**involved**" means carrying out or causing (i.e. contracting) an activity to be carried out, to a degree which Council considers to be significant.

"**activity**" means any of the following - uranium mining, the nuclear industry (including nuclear energy, nuclear waste or the production of nuclear weapons, but excluding nuclear medicine), wood-chipping of Australian native forests or harvesting of rain forest timbers.

### 18. INDUCTION TRAINING

Where directed, the successful Tenderer and any person engaged by it or its sub-contractors will be required to undergo any of the following induction's prior to commencing any work on any Council sites:

- (a) environmental induction training.
- (b) OHS&R induction training – general (Council).
- (c) OHS&R induction training – construction work (general, work activity & site specific as required).

### 19. LOCAL GOVERNMENT (GENERAL) REGULATION 2005

For a tender with an estimated value of over \$150,000, tenderers are strongly advised to read Part 7 of the *Local Government (General) Regulation 2005* before preparing a tender. Copies can be obtained from Council Libraries or from the Internet site – [www.austlii.edu.au/au/legis/nsw/consol\\_reg/lgr2005328](http://www.austlii.edu.au/au/legis/nsw/consol_reg/lgr2005328)