



CUMBERLAND
CITY COUNCIL

Conditions of RFX

1. INTERPRETATION OF REQUEST MATERIALS

- 1.1. Terms defined in the General Conditions of Contract (the Contract) have those meanings in the RFX Documents unless the context otherwise requires.
- 1.2. The Conditions of RFX does not form part of the Contract.
- 1.3. The Request Documents are:
 - (a) these conditions of RFX (Conditions of RFX), the offer RFX form (if required) (**RFX Offer Form**), and the response schedules (**RFX Response Schedules**);
 - (b) the Formal Instrument of Agreement (if required);
 - (c) the Contract including the schedules to the General Conditions of Contract;
 - (d) the Specification/Scope of Work including attachments (if any); and
 - (e) all addenda (if any) to the RFX Documents issued to Respondents by Council.
- 1.4. The Respondent is the person who submits a submission and who is identified in the Key Business Details and/or RFX Offer Form.
- 1.5. The Information Documents are:
 - (a) all information, data, test results, samples, reports or documents provided to the Respondent by the Council, the Council's representative or the Council's servants, agents or consultants which are expressly stated to be "Information Documents" or which do not form part of the RFX Documents. For the avoidance of doubt, any virtual site inspections (including videos or images of the site) constitute Information Documents; and
 - (b) any other information, data or document which is referred to or incorporated by reference in the information, data or documents referred to in paragraph (a) above.
- 1.6. Boxed text in the Scope of Works identified as "NOTE TO RESPONDENTS" (if any) comprises either instructions to the Respondent to amend the Scope of Works and/or the drawings, or instructions on the pricing of parts of the Works (which may be identified as options or alternatives). If the note contains instructions to amend the Scope of Works and/or the drawings, the Respondent must prepare its RFX based on those documents amended as instructed.

The Scope of Works and the drawings will be adjusted accordingly before the Contract is executed, and the note removed.

2. ENQUIRIES

- 2.1. If the Respondent has any doubt as to the meaning of any part of the RFX, enquiries concerning the RFX must be directed to the Nominated Contact Person via the eProcure Question Forum.
- 2.2. Respondents' names will be made available on receipt of apparently bona fide enquiries. Whether or not any enquiry received is "bona fide" for the purposes of this clause 2.2 is a matter for the Council in its absolute discretion.

3. STATUS OF RFX

- 3.1. The Respondent is invited to provide a submission in accordance with these Conditions of RFX.
- 3.2. The invitation to respond in clause 3.1 is an invitation to treat. It is not an offer capable of acceptance, nor should it be relied upon, construed or interpreted as such.
- 3.3. By submitting a submission, the Respondent acknowledges that the submission does not create a contract between the Respondent and the Council.
- 3.4. Without limiting any clause of the Conditions of Participation:
 - (a) Respondents acknowledge that no agreement has been formed between the Council and a Respondent as a result of the RFX process such that the Council is limited or constrained in the way in which it can deal with a Respondent's offer other than (if at all) as set out in these Conditions of RFX; and,
 - (b) The Council will not be liable to any Respondent for any loss or damage suffered by a Respondent arising out of or in connection with any act or omission of the Council in respect of the invitation to RFX in clause 3.1, the subject matter of this invitation to submit a response, the RFX Documents, any RFX, the evaluation of submissions, the termination of the RFX process or the award of a contract for the Works/Services (whether to a Respondent or someone else).
 - (c) Acceptance of any offer or tender does not fetter Council in the operations of its functions including any consideration and approval or refusal of any application related to the proposed land.

4. SUBMISSION

- 4.1. A submission must be made by fully completing, dating and executing the **RFX Offer Form (if required) and completing, the RFX Schedules**, and attaching to the RFX Schedules all information required by those schedules. If an addendum has been issued, the completed 'acknowledgment of addendum' form must be lodged with the RFX.
- 4.2. The amount submitted is for performing the Services/Works strictly in accordance with the requirements of the RFX Documents and is deemed to include all incidental and all contingent costs, expenses and profit.

5. LODGEMENT

- 5.1. There are two approved methods available for lodging a submission i.e. electronically or manually. Council may, in its absolute discretion choose which of the two approved methods apply in accordance with the Conditions of RFX.
- 5.2. All RFX lodgements, whether submitted; manually or electronically; are to be submitted in the appropriate manner prior to the closing time and date as detailed on the Electronic Portal: eProcure.
- 5.3. An RFX submission must contain the original RFX, completed in accordance with clause 4.
- 5.4. All costs associated with the preparation and submission of the RFX shall be borne by the Respondent.
- 5.5. Electronic lodgement is preferred and will only be accepted through the Electronic Tender Portal: <https://www.eprocure.com.au/cumberland/>
- 5.6. Using the eProcure portal will allow Respondents to answer each of the criteria response questions as detailed in clause 17 of this Document. This is a self-contained

software program and allows Respondents to attach files to any of the questions as part of their response.

- 5.7. If the Respondent encounters technical difficulties during the lodgement process, then it may contact the following help desk: 1800 377 628.
- 5.8. Manual lodgement, in accordance with this Conditions of RFX and complete in all respects, must be submitted by the Respondent in a sealed envelope and marked with the RFX number and title, and placed in the Tender Box located in the lobby of Cumberland City Council Administration building, 16 Memorial Avenue, Merrylands.
- 5.9. Submissions delivered by any other means or to any other address will not be accepted.

6. LATE LODGEMENT

- 6.1. A submission lodged after the Closing Time will not be accepted. The Council will notify the Respondent promptly should its submission or submissions (as relevant) be received late.
- 6.2. Electronic submissions must be received in their entirety, and not merely dispatched, prior to the system being shut down. Electronic submissions not received in their entirety will not be considered by the Council.
- 6.3. Lodgement of submissions on time is entirely the Respondent's responsibility.

7. NON-DISCLOSURE OF INFORMATION

- 7.1. The RFX Documents and any documents made available by the Council for the information of Respondents (including the Information Documents) (**Confidential Information**) are confidential and are furnished to the Respondent on that basis. The Respondent must comply with the obligations set out in the Contract in dealing with all Confidential Information as if it was the Service Provider/Contractor referred to in that clause.
- 7.2. Except as required by law, the amount of each submission received will not be disclosed or otherwise made public by the Council.

8. CONFLICT OF INTEREST

- 8.1. Respondents must notify the Council as soon as practical after becoming aware of an actual or potential Conflict of Interest at any time prior to receiving notification of the award of a contract or the termination of the RFX process.
- 8.2. If the Respondent has or may have an actual or potential Conflict of Interest, the Council may, at its discretion:
 - (a) exclude the submission from further consideration; or
 - (b) impose conditions on the Respondent for the management of the actual or potential Conflict of Interest.
- 8.3. If the Respondent is unable or unwilling to comply with the conditions imposed under clause 8.2 (b) or otherwise resolve the actual or potential Conflict of Interest in a manner satisfactory to the Council, the Council may, at its discretion, exclude the submission from further consideration.
- 8.4. For the purposes of this clause 8, the terms:
 - (a) "**Conflict of Interest**" means when the Respondent could be seen to influence a council officer / staff member (employed on a permanent, causal or contractual basis) due to a Non-Pecuniary Interest or a Pecuniary Interest;

- (b) **“Non-Pecuniary Interest”** means any private or personal interest the Respondent or any of its employees may have with a council officer / staff member or councillor which does not relate to financial gain (e.g. kinship, friendship, membership in an association, society etc.), or involvement or interest in any activity; and
- (c) **“Pecuniary Interest”** is a financial interest that a council officer / staff member or councillor or relatives, partners and associates has with a Respondent because of a likelihood or expectation of financial gain or loss.

9. INFORMATION DOCUMENTS

9.1. The Respondent:

- (a) must not in any way rely upon:
 - i. any Information Document or any other data, representation, statement or document made by or provided to Respondents by the Council or anyone on behalf of the Council which will not form part of the eventual contract with the Council for the performance of the Services/Works; or
 - ii. the accuracy, adequacy, suitability or completeness of the Information Documents or any other such information, data, representation, statement or document;
- (b) must prepare and submit its submission based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that the Council will be entering into the Contract relying upon the successful Respondent fulfilling the obligations in paragraphs (a) and (b).

10. CONDITIONS FOR PARTICIPATION

- 10.1. The conditions for participation set out in this clause 10 (Conditions for Participation) are minimum standard threshold requirements that must be met for a submission in response to this invitation to RFX to be accepted for evaluation.
- 10.2. Subject to clause 17.4, any submission that in the opinion of the Council does not meet a Condition for Participation may be excluded from evaluation.
- 10.3. The Conditions for Participation are as follows:
 - (a) the Respondent must complete and lodge its submission in accordance with the requirements of the [Council's Code of Conduct](#).
 - (b) the Respondent must comply with and observe the ethical principles in [Council's Statement of Business Ethics](#) which is available from Council's website.
 - (c) the Respondent must comply with the NSW Government *Code of Practice for Procurement (NSW Code)*, the *New South Wales Industrial Relations Guidelines: Building and Construction Procurement (NSW Guidelines)* and any amendments thereto to the extent that they are applicable. Refer to: <https://www.industrialrelations.nsw.gov.au/industries/key-industries-in-nsw/building-and-construction/#what-are-the-nsw-building-and-construction-guidelines>
 - (d) The respondents must acknowledge and abide by the Modern Slavery Act 2018 (NSW) <https://legislation.nsw.gov.au/view/html/inforce/current/act-2018-030>
- 10.4. Lodgement of a submission will itself be an acknowledgement and representation by the Respondent that it is aware of the requirements of its obligations in respect of clause 10.3(a) to (c) and the Respondent agrees to provide evidence of compliance

and access to all relevant information to demonstrate its compliance, as may be required by Council.

- 10.5. If the Respondent fails to comply with clause 10.3 (a) to (c), the failure may result in this or any subsequent submission being passed over without prejudice to any other rights of action or remedies available to the Council.

11. RFX VALIDITY PERIOD

- 11.1. RFXs will remain valid for a period of 90 days from the expiration of the Closing Date.

12. SITE INSPECTION AND BRIEFING

- 12.1. Where a joint site inspection and briefing for Respondents is held at the place and time identified in the **Pre-Qualification Site Inspection and Briefing Schedule** or as otherwise nominated by the Council. Where the site inspection and briefing are specified as Mandatory, the Respondent must comply with the condition specified in the pre-qualification schedule. Should the Respondent fail to attend, its submission will be returned. The Council may, in lieu of a physical site inspection, make videos or images of the site available to Respondents.
- 12.2. Where Mandatory, the Respondent must advise the names and positions of the persons attending by completing the **Site Inspection and Briefing Schedule**.
- 12.3. The Respondent may attend the joint site inspection and briefing with their subcontractors or other consultants however the maximum number of people who may attend the joint site inspection and briefing on behalf of the Respondent is **four (4)** people.
- 12.4. The Respondent acknowledges and agrees that there is an expectation by the Council that the Respondent will have a thorough knowledge of the requirements of the Project based on the RFX Documents before attending the joint site inspection and briefing.

13. DISCREPANCIES, ERRORS AND OMISSIONS

- 13.1. The Respondent must notify the Council in writing of any ambiguity, discrepancy, error omission in any of the RFX Documents. Upon receipt of any notice, the Council may, in its absolute discretion:
 - (a) not respond to or answer, or otherwise decline to respond to or answer any such notice;
 - (b) respond to or answer any such notice by issuing:
 - i. addenda to all Respondents under clause 14; or
 - ii. an Information Document to all Respondents; or
 - (c) respond only to the Respondent who gave the notice.
- 13.2. The Council will not be bound by any verbal advice given or information furnished by any of its employees, officers or agents in respect of the Services/Works. Any interpretation of the RFX Documents will be valid only if made by a formal addendum to the RFX Documents issued by the Council in accordance with clause A14.

14. ADDENDA TO RFX DOCUMENTS

- 14.1. Addenda may be issued by the Council to clarify or to amend the RFX Documents. Every addendum issued will upon issue form part of the RFX Documents. Receipt of each addendum must be acknowledged on the form issued with the addendum, and

the completed form must be lodged with the RFX. Failure to acknowledge the receipt of any addendum may render a submission non-conforming.

15. DATE FOR PRACTICAL COMPLETION

- 15.1. Where Council specifies the Date for Practical Completion, the Respondent must allow in its submission for all that which is necessary to bring the Services/Works to Practical Completion on or before the Date for Practical Completion as identified Specification and specified the Contract Conditions.
- 15.2. Where Council wish Respondents to provide the Date for Practical Completion, the Respondent must state the period within which the Respondent offers to bring the Services/Works to Practical Completion and must allow in its submission for all that which is necessary to bring the Services/Works to Practical Completion within that period.

16. NO COLLUSION

- 16.1. The Respondent must, for so long as its RFX remains capable of acceptance:
 - (a) not collude with, or communicate with any other Respondent concerning its submission or the RFX process;
 - (b) in relation to its submission, behave ethically and in accordance with generally accepted standards of commercial behaviour; and
 - (c) advise the Council in writing as soon as is practicable if it becomes aware that any of the information supplied by it, or any statement made by it, is or becomes incorrect, inaccurate or potentially misleading.
- 16.2. Without limiting any other clause in the Conditions of RFX, or any right the Council may have pursuant to these Conditions of RFX or otherwise, if the Respondent does not comply with clause 16.1, the Council may immediately terminate the involvement of the Respondent in the RFX process.

17. RFX EVALUATION

- 17.1. The object of the evaluation will be to determine which submission the Council considers offers the most advantageous option to the Council. Submissions will be assessed based on whether the submission satisfies the Conditions of Participation in clause 10.3 and the Compliance Criteria, on a Pass/Fail basis, set out below at clause 17.4. Submissions satisfying both the Conditions of Participation and the Compliance Criteria will then be evaluated using the Weighted Evaluation Criteria, which is also set out below at clause 17.5.
- 17.2. Where the Compliance Criteria set out below at clause 17.4. are listed as a **pre-qualification** requirement in eProcure, the Respondent must comply with the condition specified in the pre-qualification schedules by the closing date and time and only submitted via <https://www.eprocure.com.au/cumberland/>. Should the Respondent fail to lodge complying pre-qualification response in full by the specified deadline, they will be non-conforming and not qualify to receive the remaining RFX Request Documents.
- 17.3. The Council reserves the right, at any stage of the RFX Process, to shortlist Respondents based on an assessment against any or all of the evaluation criteria and Council may set aside submissions that are clearly not competitive or have no reasonable prospect of exhibiting the most advantageous option in comparison with other submissions received.

Compliance Criteria

- 17.4. Compliance Criteria will be assessed on a Pass/Fail basis. Council is to determine whether the criterion is satisfactorily met for a Pass score. Council will exclude a submission from further consideration if Council determines that the submission fails one or more of the Compliance Criteria.
- 17.5. The following Compliance Criteria may be used for this category in the evaluation of submissions received for this RFX. Please refer to the RFX specific Compliance schedules applied for the published RFX, which may include one or all of the below criteria. Where the Compliance Criteria is included, evaluation will be in accordance with clause 17.4.

| Compliance Criteria |
|---|
| Statement of Conformance: The Respondent demonstrates a satisfactory level of conformance with the requirements of the RFX Documents. |
| Conflicts of Interest |
| Current Insurance Policies |
| Deed of Confidentiality |
| Environment Management System |
| Financial Check Agreement |
| Heavy Vehicle National Law |
| Licences & Accreditations |
| Respondent's Workplace Relations Information and Undertaking |
| Quality Management System |
| WHS Management System |

Weighted Evaluation Criteria:

- 17.6. It is essential that Respondents address each Weighted Evaluation Criteria. Failure to provide the specified information may result in elimination from the evaluation process.
- 17.7. The following Weighted Criteria may be used for this category in the evaluation of submissions received for this RFX. Please refer to the RFX specific Returnable Schedules applied for the published RFX, which may include one or all of the below criteria. Where the Weighted Criteria is included, evaluation will be in accordance with clause 17.7.

| Weighted Evaluation Criteria |
|---|
| Lump Sum Price Breakdown: The Respondent provides detailed and competitive pricing. |
| Preliminaries Schedule Price Breakdown: The Respondent provides detailed and competitive pricing. |

| |
|--|
| Rates and Prices: The Respondent provides detailed and competitive pricing. The rates, amounts and prices must also include both off-site overheads and profit and non-time related on-site overheads and preliminaries. |
| Demonstrated Experience: The Respondent demonstrates their capacity to perform the work through a successful record of accomplishment of providing similar good / services as requested in this RFX. |
| Demonstrated Knowledge: The Respondent demonstrates their capacity to perform the work through proven skills and experience of proposed professional, technical and other staff applicable to the contract. |
| Proposed Methodology / Programme: The strengths and merits of the Respondent's methodology / proposed program and any weaknesses |
| Opportunities for Value Engineering: The benefit of any opportunities for value engineering or other time and cost efficiencies achieved by the Respondent. |
| Value Added Services: Value-added Services are the extra features a Respondent adds to its products and/or services before offering them to Customers. |

17.8. RFXs must be executed in the manner indicated below:

- (a) In accordance with 4.1 and 4.2, the Respondent declares that the statements and information provided by the Respondent in the RFX are true and accurate, and accepts that no physical signature or seal is required for the offer to be effective and binding and that the Respondent by submitting this electronic response is an Authorised Delegate executing the RFX in accordance with section 9 of the NSW Electronic Transactions Act 2000 No 8.
- (b) The RFX Schedules issued to the Respondent as a part of the RFX Documents, must be completed in full and executed by the Respondent, as required. Failure to include, or to complete, any of the RFX Schedules may render the submission non-conforming. An RFX Schedule is deemed to be not completed in full if any document called for in that RFX Schedule is not provided with the submission.

17.9. Should the Respondent's submission be successful, all or part of the information may be incorporated into the Contract as an obligation of, or restriction on, the Contractor.

17.10. All the RFX Schedules must be completed to furnish and contain all the required information.

17.11. Council may use the Respondents response to a RFX Schedule for one criteria in the evaluation of any criteria.

17.12. Council may undertake due diligence of any submission, but not necessarily all submissions, including:

- (a) regarding the financial position and viability of the submission and any associated risks;
- (b) referee checks;
- (c) past final performance reports between the Respondent and Council from previous work undertaken with Council; and
- (d) such other matters as Council considers necessary.

17.13. Council may obtain information from other sources, including financial reporting agencies, for the purpose of clause 17.9.

17.14. Council may take into account any information obtained pursuant to clause 19 in evaluating or selecting a submission.

18. VARIATION OF RFX

- 18.1. Before the Council accepts any of the received submissions, a person who has submitted a submission may, subject to this clause 18, vary the submission:
- (a) by providing the Council with further information by way of explanation or clarification, or
 - (b) by correcting a mistake or anomaly.
- 18.2. Such a variation may be made either:
- (a) at the request of the Council, or
 - (b) with the consent of the Council at the request of the Respondent, but only if, in the circumstances, it appears reasonable to the Council to allow the Respondent to provide the information or to correct the anomaly.
- 18.3. If a submission is varied in accordance with this clause 18, the Council must notify in writing all other Respondents who have lodged a submission with the same or similar characteristics as the varied submission, and provide them with the opportunity to vary their submissions in a similar way.
- 18.4. If the Council considers that a Respondent has made an unintentional error of form in its submission, the Council may, at its sole discretion, permit the Respondent to correct that error, but will not permit the Respondent to submit new or different information that would materially alter the original submission.

19. ALTERNATIVE SUBMISSIONS AND EXECUTION

- 19.1. Council may consider an alternative submission by a Respondent that does not comply with the requirements of the RFX. The Council will not consider an alternative proposal unless the alternative proposal is:
- (a) submitted together with a submission that is a complying submission and addresses the requirements of the RFX;
 - (b) clearly identified as an alternative submission;
 - (c) compliant with all essential requirements identified in the RFX;
 - (d) fully described by the Respondent, including:
 - i. the advantages, disadvantages, limitations and capability of the alternative proposal; and
 - ii. the extent to which the adoption of the alternative proposal would impact upon the RFX that addresses the requirements of the RFX including any financial impact, impact on the provision of the Works and any other consequences of the alternative proposal; and
 - iii. contains sufficient and verifiable supporting information and data to enable a comparison of the alternative proposal against other submissions.
- 19.2. Without limiting any clause of the Conditions of RFX, the Council may, in its absolute discretion and without being under any obligation to do so:
- (a) reject or otherwise not consider;
 - (b) evaluate or otherwise consider; or
 - (c) accept,
any alternative submission.

20. ACCEPTANCE OF SUBMISSION

- 20.1. The Council is not bound to accept the lowest price or any submission.
- 20.2. The Council will not be responsible for or pay for any costs, losses or expenses suffered or incurred by the Respondent out of or in the connection with the preparation and submissions.
- 20.3. A submission will not be deemed to have been accepted and no contract in respect of the Services/Works will arise between any Respondent and the Council until the successful Respondent and the Council execute the Contract by signing the Formal Instrument of Agreement or where the value is less than \$50,000, when Council issues a Purchase Order.

21. DISCLOSURE OF SUBMISSIONS AND CONTRACT INFORMATION

- 21.1. The Council will publish details of submissions and any contract awarded as a result of this RFX process in accordance with the *Government Information (Public Access) Act 2009* (NSW) and Premier's Memorandum M2007-01.

22. TERMINATION OF PROCESS

- 22.1. The Council may terminate the RFX process at any time.
- 22.2. The Council will notify all Respondents of the termination of the RFX process.
- 22.3. The Council will not be liable to the Respondent for any costs, losses, damages or expenses suffered or incurred by the Respondent in preparing or lodging its submission or in respect of any discussions, enquiries or negotiations undertaken by the Respondent after lodging its submission, whether or not the RFX process is terminated by the Council.

23. DISCRETION OF THE COUNCIL

- 23.1. The Council reserves the right at any time and on any grounds to:
 - (a) amend the RFX Documents, the Scope of Works/Specification or the Services/Works;
 - (b) readvertise for new RFXs;
 - (c) terminate at any time further participation in the process by any or all Respondents;
 - (d) amend or terminate the RFX process;
 - (e) extend the Closing Time for RFXs;
 - (f) alter the approach during any negotiations;
 - (g) require additional information or clarification (including presentations) from any Respondent and use or not use such information in the evaluation;
 - (h) elect not to select any Respondent as preferred Respondent; or
 - (i) withdraw the invitation to RFX.

24. NON-CONFORMING SUBMISSIONS

- 24.1. Any submission may be regarded as non-conforming and excluded from further participation if:
 - (a) the Respondent is or becomes insolvent, bankrupt or subject to external administration;
 - (b) the submission is clearly incomplete or clearly non-competitive; or
 - (c) the Respondent makes a representation or warranty that is false or misleading.

25. PROBITY ADVISER

- 25.1. The Council may appoint a probity advisor to monitor the RFX process. The probity advisor will be an observer of the RFX process and will not be involved the detailed evaluation of any submissions.



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