



Section B

Conditions of Tendering

Contract No. 2914_2021-22_TTB_24

Contract Name: Waste Facility Operation - Mundubbera

Enquiries on this tender should be directed to:

Tender Administrator: Tanya Walters

Email: Tenders@northburnett.qld.gov.au

Contents

1	Tender Details	1
1.1	Lodgement details	1
1.2	Timetable	1
1.3	Site inspection	2
2	Invitation to Tender	2
2.1	Invitation	2
2.2	General requirements	2
3	Tender Documents	2
3.1	Tender documents	2
3.2	Addenda	3
3.3	Precedence	3
3.4	Works to be performed	3
3.5	Tenderer to be informed	3
3.6	Discrepancies and omissions	4
3.7	Exclusivity	4
3.8	Extension of time	4
3.9	Tenderer not to solicit Council and its Advisors	4
3.10	Exclusion from Tender process	5
3.11	No joint bids	5
4	Tender Preparation and Lodgement	5
4.1	Content of Tenders	5
4.2	Format of Tenders	6
4.3	Conforming Tenders	6
4.4	Alternate Tender	6
4.5	Non-conforming Tender	7
4.6	Tendered prices	7
4.7	Tender lodgement	7
4.8	Electronic lodgement of Tenders	7
4.9	Late Tenders	7
4.10	No public opening	8
4.11	Validity period	8
4.12	Licence to use	8
5	Evaluation of Tenders	8
5.1	Evaluation Criteria	8
5.2	Negotiations	9
6	Formation of Contract	10
7	Acknowledgement by Tenderer	10
8	Council's Rights Reserved	11
8.1	Council's rights	11
8.2	Variations to terms	12

8.3	Variations to Tenders	13
9	Use of Subcontractors	13
10	Provision of Information by Tenderers	13
10.1	Compliance with statutory requirements	13
10.2	Conflicts of interest	13
10.3	No collusion	14
11	Right to Information	14
12	Council Confidential Information	14
13	Interpretation	15
13.1	Definitions	15
13.2	Undefined terms	17
13.3	Construction	17
13.4	Headings	18
13.5	Precedence	18
14	General	18
14.1	No advertising	18
14.2	Governing law and jurisdiction	18
14.3	Entire agreement	18

1 Tender Details

1.1 Lodgement details

ITEM NO	ITEM	DETAILS
1.	Tender Number:	2 914_2021-22_TTB_24 Waste Facility Operation - Mundubbera
2.	Tender Name:	Waste Facility Operation - Mundubbera
3.	Lodgement:	By email to admin@northburnett.qld.gov.au
4.	Validity Period:	90 days after the Closing Date.
5.	Tender Contact: (for enquiries)	Tanya Walters Email: Tenders@northburnett.qld.gov.au
6.	Tender Administrator	Rachael Duncan <u>Email:</u> rachael.duncan@northburnett.qld.gov.au
7.	Council email	Tenders@northburnett.qld.gov.au

1.2 Timetable

Council is aiming to appoint the successful Tenderer by April 2022. To meet this timeframe, the milestones and respective dates are proposed.

MILESTONE	DATE
Last date for enquiries	48 hours prior to the Closing Date
Closing Date (and time)	22 April 2022 at 2:00pm
Contract award	May 2022
Contract execution	June 2022
Services commencement	2 July 2022

1.3 Site inspection

Date and Time:	10:00am, 5 April 2022
Address:	Mundubbera Landfill, Boondooma Road, Mundubbera
Special Instructions:	<ul style="list-style-type: none">(a) Respondents required to register their attendance via email to tanya.walters@northburnett.qld.gov.au(b) The site visit will commence at Mundubbera WMF. Respondents must arrange their own transportation.(c) Attendance by prospective Respondents at the site briefing is compulsory.(d) All attendees must wear enclosed footwear, hi-visibility vests and sun protection.(e) Questions and requests for clarification put to Council, together with answers and responses to those questions and requests for clarification, will be issued in writing to all prospective Tenderers, regardless of whether or not they attend the site brief.

2 Invitation to Tender

2.1 Invitation

- (a) North Burnett Regional Council ('Council') through a public tender, invites offers from suitably qualified individuals or organisations an Invitation to Tender on Contract No. 2914_2021-22_TTB_24 Waste Facility Operation - Mundubbera in accordance with the Tender Documents.
- (b) This Tender process is conducted in accordance with the tendering requirements under the *Local Government Act 2009*.

2.2 General requirements

The Tenderer must:

- (a) be registered for GST and have a current Australian Business Number (ABN);
- (b) be represented as the entity identified by the ABN;
- (c) have the authorised person(s) signing on behalf of the named Tenderer;
- (d) allow for compliance with all relevant legislation and local by-laws within the Council; and
- (e) provide all pricing in Australian currency exclusive of GST for Taxable Supply.

3 Tender Documents

3.1 Tender documents

The Tender Documents comprise the following:

- (a) Information for Tenderers;

- (b) Conditions of Tendering;
- (c) General Terms and Conditions;
- (d) Services Specification;
- (e) Tender Response Form; and
- (f) any Addenda issued for this Tender.

3.2 Addenda

- (a) Addenda may be issued at any time prior to the Closing Date. Each addendum and, upon issue, will form part of the Tender Documents
- (b) Addenda will be available on Council's website to enable access.
- (c) Acknowledgement of each Addenda must be made by the Tenderer by signing and returning a copy of each Addenda as part of the Tender submission.
- (d) Any of the Tender Documents may be amended to reflect the requirements of any Addenda.
- (e) Any Tender Documents may be amended after the Closing Date.

3.3 Precedence

To the extent that there is any inconsistency between:

- (a) any Addenda and the other Tender Documents, the Addenda shall prevail; and
- (b) if two or more Addenda are issued in relation to a matter, the last issued Addenda shall prevail.

3.4 Works to be performed

- (a) The Mundubbera Waste Facility Operation Services requirements are outlined in the Contract Documents.
- (b) Tenderers should read these fully to ascertain the nature of the works to be performed, and the terms on which it is to be performed.
- (c) Tenderers **MUST** fully complete and return the Tender Response Form and may, if required, attach supporting documentation relevant to this Tender.

3.5 Tenderer to be informed

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

- (c) The Tenderer should satisfy itself that it has sufficient and complete information to prepare its Tender and Tenderers will have no claims against Council that information is missing or incomplete once Tenders have been submitted.
- (d) Tenderers are required to familiarise themselves and comply with all regulatory requirements relating to the Services.
- (e) This includes the extent, if any, of any GST payable for the supply of any goods and services pursuant to the Contract.
- (f) Tenderers must submit written evidence to Council, within 7 days of receiving a written notice from Council, that will enable Council to satisfy itself that the Tenderer is competent to complete the Contract satisfactorily and in the time stated.
- (g) Tenderers must form their own assessment of the amount of Equipment, materials and all other items and requirements necessary to perform the true intent of the proposed Contract and of the conditions, difficulties and hazards that may attend the performance of the Services.
- (h) The Council will accept no responsibility for a Tenderer's failure to make its own enquiries, interpretations and conclusions from information contained within the Tender Documents or otherwise.

3.6 Discrepancies and omissions

Should a Tenderer find discrepancies, errors or omissions in the Tender Documents, or should there be any doubt as to their meaning, the Tenderer should at once notify in writing the Tender Administrator through email.

3.7 Exclusivity

- (a) Subject to exceptions as noted in the Tender Documents, Council will not appoint any other person to perform the Services.
- (b) Nothing in this Contract prevents the Council, acting in its regulatory role, or in cases deemed necessary by the Council, at its sole discretion, for the protection of the health of the community, from collecting, treating, recovering or disposing of any type of waste or recyclables by itself or by engagement or licensing of third parties to do so.

3.8 Extension of time

- (a) The Council, at its absolute discretion, may extend the Closing Date for the submission of Tenders in accordance with the tendering requirements under the *Local Government Act 2009*.
- (b) A Tenderer may request that Council extend the Closing Date for the submission of Tenders by written application to the nominated contact person. Any such requests must be received via the nominated email address at least 5 Business Days prior to the Closing Date, and must provide sufficient reasons to support the request. For the avoidance of doubt, Council is not obliged to do approve the extension of the Closing Date. Any extension will apply to all Tenderers and will be notified to registered tenderers by email and by Council's Website.

3.9 Tenderer not to solicit Council and its Advisors

The Tenderer and its representatives must not interfere or attempt to interview or discuss this Tender with any Councillor or employees of the Council in any way, other than the Tender Administrator. Should the successful Tenderer be found to have offered or given gratuity, bonus, discount or bribe or any sort to any elected member of Council or any employee of Council to influence, in Council's opinion, any decision to granting of the Tender, the Evaluation Panel shall cancel the Tender or Contract and the Tenderer shall indemnify the Council against loss or damage which the Council may thereby sustain.

- (a) Council reserves the right to reject any Tender submitted by a Tenderer which contravenes this **clause 3.9**.

3.10 Exclusion from Tender process

- (a) Council may, in its absolute discretion, without prejudice to any other rights or remedies of Council, exclude a Tenderer from continued participation in the Tender Process and may cease to consider any Tender submitted by the Tenderer if Council determines that the Tenderer or any of its Associates has failed to comply with a material requirement of these Conditions of Tendering (but, for the avoidance of doubt, Council is not obliged to do so).
- (b) Council may, in its absolute discretion, waive some or all of the obligations of a Tenderer under the Conditions of Tendering.

3.11 No joint bids

Each Tender must be submitted by a single Tenderer only. Tenders by joint Tenderers are not permitted and will not be accepted by Council.

4 Tender Preparation and Lodgement

4.1 Content of Tenders

- (a) Each Tender must:
 - (i) be in legible English;
 - (ii) be accompanied by a fully completed Tender Response Form properly executed by the Tenderer as a deed poll in favour of Council;
 - (iii) include all information and documentation required to be provided by these Conditions of Tendering;
 - (iv) be submitted in the format required by **clause 4.2**; and
 - (v) be priced in accordance with **clause 4.6**
 - (vi) be lodged in accordance with **clause 4.7** and **4.8**.
- (b) If the Tender Response Form is executed under power of attorney, the Tenderer must submit a certified copy of the deed under which the attorney's authority to execute the Tender Response Form is derived.
- (c) Tenderers may provide other supporting information and material they consider appropriate to support their submission and must submit sufficient information to enable the merits of the Tender to be fully evaluated.

- (d) Where a Tenderer has any doubt as to the meaning of any portion of the Invitation to Tender and had not obtained clarification from the Tender Administrator before Tender close date, the Tenderer should include a statement of interpretation put on that particular specified portion on which the response has been submitted.
- (e) Submission of an offer without any qualification or statement regarding interpretation will be construed as an acknowledgment and acceptance on the part of the Tenderer of Council's interpretation.

4.2 Format of Tenders

For Tenderers that submit more than one Tender, each Tender must be complete and must not be supplemented by cross-references to information contained in other Tenders or documents. Each Tender must be submitted using the format of the Tender Response Form.

4.3 Conforming Tenders

- (a) To submit a Conforming Tender, the Tender must:
 - (i) be fully complete and contain all the information required under **clause 4.1(a)**;
 - (ii) subject to **clause 4.3(b)** comply with all of the requirements contained in the Tender Documents;
 - (iii) be lodged before the Closing Date;
 - (iv) be submitted in accordance with **clause 4.8**; and
 - (v) ensure the Form of Tender is signed and witnessed.
- (b) If a Tenderer wishes to propose departures from the terms of the General Terms and Conditions, it must in **Schedule 4.1** of the Tender Response Form:
 - (i) provide clear and detailed reasons for the departure(s); and
 - (ii) propose revised drafting to the terms of the General Terms and Conditions that would implement the departure(s).
- (c) Council is not bound to accept any proposed departures from the terms of the General Terms and Conditions.

4.4 Alternate Tender

- (a) An Alternate Tender may be lodged, where the Tenderer has also lodged a Conforming Tender.
- (b) To submit an Alternate Tender, the Tenderer must:
 - (i) lodge a Conforming Tender;
 - (ii) be fully complete and contain all the information required under **clause 4.1(a)**;
 - (iii) clearly detail any variance from the requirements specified in the Tender Documents in accordance with **clause 4.4(c)**.
 - (iv) be lodged before the Closing Date;
 - (v) be submitted in accordance with **clause 4.8**; and
 - (vi) ensure the Form of Tender is signed and witnessed.

- (c) Alternate Tenders must state
 - (i) the reasons for each of the alternatives submitted as part of the Alternate Tender
 - (ii) the relevant advantages to the Council and Tenderer for each of the alternatives; and
 - (iii) the impact of each of the alternatives on the ability for the Tenderer to meet the Service Specifications.
- (d) Where an Alternate Tender is submitted, the following applies:
 - (i) Council may at its sole discretion consider an Alternate Tender other than where this is in conflict with Council's procurement obligations.
 - (ii) Council will only consider an Alternate Tender where it is submitted with a Conforming Tender.

4.5 Non-conforming Tender

- (a) A Non-conforming Tender is one that does not comply with all the requirements of **clause 4.3(a)** and **4.4(b)**.
- (b) Where a Non-conforming Tender is submitted Council must comply with tendering requirements under the Local Government Act 2009 and may at its sole discretion consider or reject a Non-conforming Tender.

4.6 Tendered prices

- (a) All prices included in the Tender must be in Australian dollars and be GST exclusive.
- (b) All prices included in the Tender must be prices that are current as at the Closing Date.

4.7 Tender lodgement

Tender submissions must be lodged by email to admin@northburnett.qld.gov.au prior to the Closing Date.

4.8 Electronic lodgement of Tenders

- (a) The Tenderer must lodge one scanned electronic copy (in a single file) of its Tender in Adobe PDF format via the nominated email address. Please note that a 20MB file restriction exists.
- (b) Only Tenders emailed to Tenders@northburnett.qld.gov.au quoting the tender number reference and title will be accepted.
- (c) Any Tender not received before the Closing Time and Date may be rejected at Council's sole discretion.
- (d) For enquiries regarding email tender process, contact Council's Records Team:
 - (i) Telephone 1300 696 272
 - (ii) Email: Tanya.Walters@northburnett.qld.gov.au

4.9 Late Tenders

Tender submissions must be emailed before Closing Date. Any submission received after the Closing Date shall be excluded from the evaluation. Council

however reserves the right to consider late Tenders at the sole discretion of the Evaluation Panel.

4.10 No public opening

Tenders will not be publicly opened by Council.

4.11 Validity period

Each Tender remains valid and is irrevocable:

- (a) for the Validity Period as specified in **section 1.1 item 4**; or
- (b) until Council notifies the Tenderer that the Tender has not been accepted,

whichever occurs first.

4.12 Licence to use

- (a) The documents comprising each Tender become the property of Council upon being submitted.
- (b) The Tenderer grants Council and its councillors, employees, agents and contractors an irrevocable, perpetual, non-exclusive, free of charge licence (including the right to sublicense) to use and exercise all Intellectual Property Rights in the whole or any part of the Tenderer's Tender for any purpose related to the Tender Process, including the use, reproduction and modification of the Tender.
- (c) The Tenderer represents and warrants, and it is a condition of these Conditions of Tendering, that:
 - (i) it owns or has a right to use the Intellectual Property Rights in its Tender for the purposes of the Tender Process;
 - (ii) it has the right and authority to grant the licence in **clause 4.12(b)**; and
 - (iii) Council's exercise of the rights granted by the Tenderer under **clause 4.12(b)** will not infringe the Intellectual Property Rights or other rights of any third party.
- (d) This **clause 4.12** survives the expiry or termination of any contract that forms between a Tenderer and Council under the Conditions of Tendering.

5 Evaluation of Tenders

5.1 Evaluation Criteria

- (a) Council will evaluate Conforming Tenders, Non-Conforming Tenders (and any Alternate Tenders it determines that it will evaluate) against the Evaluation Criteria, to the extent they are relevant and applicable to the evaluation process, having regard to the specific provisions of, including the sound contracting principles specified in, the Local Government Act.
- (b) The key Evaluation Criteria applicable to this Tender, not listed in any order of priority, are:
 - (i) Mandatory Criteria:
 - (A) financial capacity; and

- (B) meet minimum insurance requirements.
- (ii) Weighted Evaluation Criteria:
 - (A) Price 40%;
 - (B) Local Content 5%;
 - (C) Previous Experience in landfill, earthmoving or quarrying 30%;
 - (D) Methodology for delivery 15%;
 - (E) Knowledge of environmentally relevant activities and regulations (waste management) 10%.
- (c) The evaluation of Tenders will be based upon the information provided in the Tenders (as varied in accordance with these Conditions of Tendering).
- (d) In addition to **clause 5.1(b)**, Council may, in its absolute discretion, in evaluating Tenders have regard to:
 - (i) Council's and its advisors' previous experience and dealings with the Tenderer;
 - (ii) any information received from any referee in relation to the Tenderer;
 - (iii) any information about a Tenderer which is in the public domain; and
 - (iv) any information obtained pursuant to due diligence investigations or which comes to the attention of Council or its advisers.
- (e) The Tenderer must ensure that its Tender addresses ALL Evaluation Criteria.

5.2 Negotiations

- (a) Council reserves the right to enter into negotiations with one or more Tenderers in respect of their Tenders (**Negotiations**).
- (b) The objective of Negotiations with a Tenderer is to agree all commercial issues and completely settle the terms of the relevant Contract Documents to which the Tenderer's Tender relates.
- (c) If Council wishes to enter into Negotiations with a Tenderer, Council may do one or more of the following:
 - (i) issue the Tenderer with a program and timetable for negotiations together with:
 - (A) redrafts of the relevant Contract Documents; and
 - (B) Council's comments on the Contract Documents submitted by the Tenderer;
 - (ii) meet and negotiate with the Tenderer; and
 - (iii) require the Tenderer to:
 - (A) comply with Council's program, timetable, location and format for Negotiations; and
 - (B) meet and negotiate in good faith with Council to endeavour to finalise the terms of the Contract.

- (d) Unless otherwise stated, Council entering into Negotiations with a Tenderer does not amount to an acceptance or rejection of that Tenderer's Tender, or the making of a counter offer to that Tenderer.
- (e) Council may at any time discontinue Negotiations with a Tenderer and exercise any of its other rights under these Conditions of Tendering.

6 Formation of Contract

- (a) Notwithstanding that Council may verbally inform a Tenderer that its Tender has been accepted, no contractual relationship exists or will arise between Council and any Tenderer in respect of the relevant Service unless and until Council informs the Tenderer in writing that it has accepted the Tenderer's Tender (**Acceptance Notice**)
- (b) The successful Tenderer will be required to execute and return, within 10 (ten) Business Days of these documents being presented to the Tenderer, 3 (three) copies of a Formal Instrument of Contract incorporating:
 - (i) the General Terms and Conditions
 - (ii) the Service Specification
 - (iii) nominated Schedules that formed part of the Tender; and
 - (iv) the Council's letter of acceptance.
- (c) If the Contract is not executed by the successful Tenderer and returned to Council, together with any payment or security, within the 10 Business Day period, Council may:
 - (i) treat that failure as a breach constituting a repudiation of the binding agreement created by the Council's acceptance of the successful Tenderer's Tender and accept that repudiation; or
 - (ii) terminate the agreement; and recover any damages arising from the repudiation by the Tenderer.

7 Acknowledgement by Tenderer

- (a) By lodging a Tender, a Tenderer represents and warrants, and it is a condition of these Conditions of Tendering, that:
 - (i) each of the matters set out in the Tenderer's Tender are true, accurate, complete and not misleading or deceptive;
 - (ii) it has not relied, and will not rely, on information provided by or on behalf of Council without independently verifying such information and independently satisfying itself as to the accuracy, adequacy, suitability or correctness of such information;
 - (iii) it has satisfied itself as to the local conditions, environment and facilities that may impact on its ability to supply the relevant Services;

- (iv) it has examined, and will examine, all information relevant to the risks, contingencies and other circumstances having an effect on its Tender and the supply of the relevant Services;
 - (v) it has fully informed itself of the nature of the obligations to be performed under the relevant Contract, including the labour, plant, materials, mechanical, plant, equipment and other resources necessary, suitable or desirable to perform the obligations under the relevant Contract;
 - (vi) it has satisfied itself as to the correctness and sufficiency of its Tender for the performance of the obligations under the relevant Contract and that its rates and prices include compliance with its obligations under the relevant Contract and of all matters and things necessary for the due and proper performance of the relevant Contract; and
 - (vii) it has carried out its own investigations and due diligence as to the feasibility of its Tender and relied on those investigations.
- (b) The Tenderer acknowledges and agrees that Council will rely upon the representations made and warranties given in **clause 7(a)** in considering any Tender of the Tenderer and in considering whether to enter into a Contract with the Tenderer.
 - (c) Failure by a Tenderer to do any or all of the things it represents and/or warrants to have done, or will do, does not relieve the Tenderer of its obligations to perform and complete the relevant Contract in accordance with its terms.
 - (d) Council makes no representations and offers no undertakings in issuing this Tender.
 - (e) Council is not bound to accept the lowest or any Tender/s.
 - (f) the Tender Submission cannot be withdrawn without the consent of the Council unless it is withdrawn prior to the Closing Date in writing .
 - (g) Council will not be responsible for any costs or expenses incurred by a Tenderer arising in any way from the preparation and submission of Tenders including attending any site brief or participating in any post Tender activities.
 - (h) Council accepts no responsibility for a Tenderer misunderstanding or failing to respond correctly to this Tender.
 - (i) Council does not represent or warrant that any of the information provided by Council in Information for Tenderers or any other Supporting Information, or as part of the Tender Process, is complete or accurate.

8 Council's Rights Reserved

8.1 Council's rights

Council reserves the right, at its absolute discretion to:

- (a) cease to proceed for any reason, with the process outlined in this Invitation to Tender at any stage of the process;
- (b) suspend or vary the structure or timing of the process or any part of it;
- (c) vary selection criteria and criteria weighting;
- (d) cancel, add to or amend the information, terms, procedures or processes set out in this Invitation to Tender;
- (e) undertake 'due diligence' checks, including, but not limited to, verifying references and referees, and undertaking company searches and credit checks;
- (f) cease evaluating a Tender where it fails to meet mandatory requirements;
- (g) negotiate or discuss a Tender with individual Tenderers and conduct parallel negotiations with multiple Tenderers;
- (h) call for best and final Tenders;
- (i) accept any Tender which does not conform with the requirements of this Invitation to Tender;
- (j) accept one Tender for the whole portion of the goods and services required in the Invitation to Tender documents and to accept any Alternate Tender offered; and
- (k) conduct financial, corporate, credit, security or police checks on a Tenderer or its personnel.

8.2 Variations to terms

- (a) Without limiting any other rights or remedies of Council, it may, in its absolute discretion, at any time by notice to each Tenderer, do one or more of the following:
 - (i) vary, suspend or terminate the Tender process;
 - (ii) vary the terms of the Conditions of Tendering;
 - (iii) extend the Closing Date.
- (b) Variations by Council under **clause 8.2(a)** will be issued in the form of a written Addenda by email to registered participant to the site inspection. Addenda will amend the terms of the Conditions of Tendering or the Contract Documents (as applicable) on and from the date specified in the Addenda or, if no date is specified, immediately the Addenda is posted to Council's website.
- (c) A Tenderer may not do any of the things that Council is permitted to do under this **clause 8.2**.

8.3 Variations to Tenders

- (a) A Tenderer must not vary its Tender unless invited to do so by Council.
- (b) Council may:
 - (i) invite one or more Tenderers to vary its Tender but has no obligation to do so and need not extend the same opportunity to each Tenderer; and
 - (ii) accept or reject a variation to a Tender in its absolute discretion.
- (c) Any variations to a Tender which are invited by Council (including as a result of a request for clarification, improvement or additional information or as a result of Negotiations) and that are accepted in writing by Council, will form part of the Tender as if they were included in the original Tender submitted by the Tenderer.

9 Use of Subcontractors

- (a) 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.
- (b) Failure to provide such information may result in the Tender being excluded from further consideration.
- (c) Subcontractors will be required to satisfy the terms and conditions of these Tender Documents and will be required as a condition of their acceptance by the Council to comply with all relevant conditions of the Contract.
- (d) Tenderers will be required to ensure that subcontractors satisfy the terms and conditions of the Tender Documents and to include all relevant conditions of the contract in subcontracts.

10 Provision of Information by Tenderers

10.1 Compliance with statutory requirements

The successful Tenderer must comply with all requirements of all Acts of Parliament of the Commonwealth of Australia and with the requirement of all Acts of the Parliament of the State of Queensland and with the requirements of all regulation, orders or proclamations made or issued under any such Acts and with the requirements of all public authorities (including Council) in any way affecting or applicable to the due and faithful performance and fulfilment of the tender and the Contract arising out of the acceptance and in connection with, any Works or Services carried out or provided by the Tenderer including provision of adequate protection to the staff of the Tenderer or Council on the sites and the public where access is required.

10.2 Conflicts of interest

- (a) Tenderers must inform Council in writing of any circumstances or relationships which will constitute a conflict or potential conflict of interest if the Tenderer is awarded the Contract.

- (b) Where a conflict or potential conflict of interest is declared the Tender must advise how the conflict or potential conflict of interest will be addressed.

10.3 No collusion

If requested, a Statutory Declaration confirming there has been no “Collusive Tendering” must be completed and provided by any Tenderer.

11 Right to Information

- (a) The RTI Act provides members of the public with a legally enforceable right to access documents held by Council.
- (b) The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to the public interest.
- (c) Information contained in a Tender is potentially subject to disclosure to third parties. In the evaluation of any disclosure required by the Council pursuant to the RTI Act, the Tenderer accepts that any information provided in its Tender, including information marked as confidential, will be assessed for disclosure in accordance with the terms of the RTI Act.
- (d) The Council cannot guarantee that any information provided by the Tenderer will be protected from disclosure under the RTI Act.
- (e) This **clause 11** survives the expiry or termination of any contract that forms between a Tenderer and Council under the Conditions of Tendering.

12 Council Confidential Information

- (a) All information gained by the Tenderer during the tender period and the tender processes is to remain confidential. The Tenderer must:
 - (i) acknowledge that the Confidential Information is sensitive and valuable and will remain at all times the property of the Council;
 - (ii) not use the Confidential Information for any purpose other than for preparing its Tender;
 - (iii) not copy any material comprising or containing Confidential Information, other than where (and then only to the extent that) copying is necessary to enable it to prepare its Tender; and
 - (iv) obtain the Council’s written consent before disclosing Confidential Information to a person other than the Tenderer.
- (b) The consent of the Council for the disclosure of the Confidential Information by the Tenderer may be given or withheld on such terms and conditions as the Council considers appropriate.
- (c) The Tenderer’s obligation under this **clause 12** continues after the closing of Tenders and awarding of the Contract.
- (d) The Tenderer permits the Council to use and disclose all information provided by the Tenderer for the purpose of evaluating the Tender,

- progressing the Tender, or for the Council's functions and activities and, in the event that the Council enters into a Contract with the Tenderer, for the performance of the Contract.
- (e) Council reserves the right to retrieve from a relevant person any Confidential Information held by that person, subject to Council having given written notice to the Tenderer that the relevant person is to be denied further access to the Confidential Information.
 - (f) Failure or delay by the Council in enforcing strict compliance with this **clause 12** or pursuing a remedy under this **clause 12** will not constitute a waiver or implied variation of the entitlement or remedy.
 - (g) This **clause 12** will not apply to an item of Confidential Information where the Tenderer can establish that:
 - (i) the item has been transferred to the public domain through no fault of the Tenderer;
 - (ii) the item was already in the Tenderer's possession when it was supplied or made available by the Council, and not acquired directly or indirectly from the Council; or
 - (iii) it has received from the Council written notification that Council no longer requires the Tenderer to keep the item confidential.
 - (h) Council is not required to maintain the confidentiality of information in circumstances including where (without limitation):
 - (i) Council is required or authorised by law to make disclosure;
 - (ii) the information otherwise ceases to be confidential information;
 - (iii) Council receives the information from any source; or
 - (iv) independently develops the information outside of a relationship of confidentiality.

13 Interpretation

13.1 Definitions

In these Tender Documents, the following terms shall, unless inconsistent with the context, have the meanings indicated:

"Addenda" means addenda to this Invitation to Tender issued by the Council from time to time. Addenda may be issued to amend, alter, clarify, add to or remove from the form and contents of the Invitation to Tender or to effect modifications to the Invitation to Tender.

"Alternate Tender" has the meaning given in **Clause 4.4(b)**.

"Business Day" means a day that is not a Saturday, Sunday or public holiday in Gayndah, Queensland.

"Closing Date" means the last date for lodgement of Tenders as specified in the Conditions of Tendering or such later date as may be notified in writing to the Tenderer by the Council.

“Conditions of Tendering” means the conditions of tender set out in this document.

“Confidential Information” means information that is not trivial and:

- (a) is by its nature confidential;
- (b) is communicated by the disclosing Party to the receiving Party as confidential; and
- (c) the receiving Party knows or ought to know that information is confidential.

Subject to (a), (b) and (c) above, Confidential Information includes information which is:

- (d) comprised in or relating to any Intellectual Property Rights of the Parties;
- (e) relating to the internal management and structure of the either Party, or the personnel, policies and strategies of either Party;
- (f) of any actual or potential commercial value to either Party or to the person or corporation which supplied that information;
- (g) in a Party’s possession relating to the other Party’s clients or suppliers, and like information; and
- (h) any technical, commercial or other information, ideas, concepts, know-how, data, drawings, specifications or designs of any kind;
- (i) owned by the Council and supplied or made available by the Council to the Tenderer; or
- (j) created by the Tenderer, from the material supplied or made available to the Tenderer by the Council for the purposes of submitting the Tender;

but does not include information which:

- (i) was already lawfully disclosed by a Party prior to the Party being required to treat the information as confidential;
- (ii) is lawfully received from a third Party which is not bound by a duty of confidentiality;
- (iii) has become public knowledge (other than through a breach of an obligation of confidence under this Contract);
- (iv) was independently developed or released by a Party without reference to the Confidential Information;
- (v) the Party is required by law to disclose; or
- (vi) the Party is required by this Contract to disclose to a third Party.

Except where the Tender is publicly advertised, the Tenderer must consider the Tender and associated information to be Confidential Information and must take all reasonable steps to safeguard the confidentiality of that information.

“Conforming Tender” has the meaning given in **clause 4.3(a)**.

“**Contract Documents**” means the General Terms and Conditions and the relevant Services Specification.

“**Council**” means North Burnett Regional Council.

“**Evaluation Criteria**” means the various criteria which will be used to determine the most advantageous arrangement before establishing a Contract with a Tenderer, considering all aspects of the Local Government Act.

“**Evaluation Panel**” means the panel appointed to evaluate Tenders.

“**Invitation to Tender**” means all the documents issued by the Council which are referred to in **clause 3.1** of this document.

“**Non-conforming Tender**” has the meaning given in **clause 4.5**.

“**RTI Act**” means the Right to Information Act 2009.

“**Services**” has the meaning described in the specification.

“**Tender**” means a tender or tenders submitted by the Tenderer in response to the Conditions of Tendering.

“**Tender Documents**” means those documents listed in **clause 3.1**.

“**Tenderer**” means a person or corporation who lodges a Tender in accordance with this Invitation to Tender.

13.2 Undefined terms

In these Conditions of Tendering, where a term is not defined in **clause 13.1**, but is defined in the Contract Documents, it has the meaning given in the Contract Documents.

13.3 Construction

Unless expressed to the contrary, in these Conditions of Tendering:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) all references to time are to the time in Gayndah, Queensland;
- (d) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (e) “includes” means includes without limitation;
- (f) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (g) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;

- (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and
- (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation; and
- (h) clause, schedule and annexure references in these Conditions of Tendering are references to clauses, schedules and annexures of these Conditions of Tendering, unless stated otherwise.

13.4 Headings

Headings do not affect the interpretation of these Conditions of Tendering.

13.5 Precedence

In the event of an inconsistency between the parts of these Conditions of Tendering listed in this **clause 13.5**, the document higher in the list shall prevail to the extent of the inconsistency:

- (a) these Conditions of Tendering;
- (b) the Contract Documents; and
- (c) the Tender Response Form.

14 General

14.1 No advertising

The successful Tenderer may not publish any information in relation to the award of the Contract without the prior written approval of Council.

14.2 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws applicable in Queensland.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

14.3 Entire agreement

- (a) The Conditions of Tendering constitutes the entire agreement between the parties as to its subject matter and supersedes all prior agreements, arrangements, memorandum of understandings, representations, warranties, promises, statements, negotiations and letters in respect of its subject matter.
- (b) The Tenderer relies entirely on its own independent appraisal and assessment of all relevant matters and (other than warranties expressly given by Council in this Agreement) does not rely on any information, warranties, representations or misrepresentations made or given by Council or its agents in connection with these Conditions of Tendering, and releases Council from any claims it may have in respect of the tender process.

- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of the Conditions of Tendering; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.