

DIT CONDITIONS OF TENDERING**CT 1 REQUEST FOR TENDER DOCUMENTS**

The Request for Tender (“RfT”) documents comprise of the documents listed in the contents page of this document. If the General Conditions of Contract are an Australian Standard, the General Conditions of Contract will not be included in these documents and Tenderers are advised to obtain their own copy.

Any Departmental publications referred to in these documents are available from the internet at: https://dit.sa.gov.au/contractor_documents

No explanation or amendment to the RfT documents will be recognised unless in the form of a written amendment thereto issued by the Principal. The Principal may amend the RfT documents at any time prior to the closing date. The Tenderer must be registered at the SA Tenders and Contracts website: <https://www.tenders.sa.gov.au/tenders/index.do>. Telephone (08) 8462 1401 for further information.

CT 2 TENDERER’S WARRANTIES AND OBLIGATIONS

These Conditions of Tendering prescribe the rules for the conduct of the tender process. By submitting a tender, a Tenderer agrees to comply with, and be bound by, the rules contained within these Conditions of Tendering. If a Tenderer acts contrary to these rules, the Principal reserves the right to terminate consideration of their tender, but is under no obligation to do so. A reference to a Tenderer in these conditions includes its employees, agents and subcontractors.

Except for any express statement contained in the RfT documents, the Tenderer warrants that in lodging its tender it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of the Principal, its officers, employees, agents or advisers. A Tenderer cannot rely upon any document designated as “For Information Only”.

This RfT is not an offer and these Conditions of Tendering will not form part of any Contract. Prior

to submitting a tender, a Tenderer is deemed to have:

- a) examined all written documentation made available by the Principal to the Tenderers for the purpose of tendering;
- b) examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and
- c) where applicable, inspected the site and its near surrounds.

The Tenderer warrants that it will maintain the validity of its Tender for a period of 120 days from date of submission of Tender. Where the Principal seeks an extension of this period, a request in writing will be forwarded to the Tenderer

CT 3 BRIEFING

If a Mandatory Briefing is indicated on the cover sheet of this RfT document, attendance at the Briefing by the Tenderer or a competent representative of the Tenderer is a condition precedent to the submission of a tender. In the event that a Tenderer or a competent representative does not attend the Mandatory Briefing, the Principal (in its absolute discretion) will make a determination whether that company will be permitted to submit a tender, taking into account the requirements of the DIT Policy for managing pre- tender briefings.

Minutes of the Briefing recorded by the Principal will be issued to all in attendance for information only.

CT 4 CLARIFICATION

Tenderers may seek clarification of any matters relating to this RfT by directing enquiries to the Contact Officer(s) nominated on the cover sheet of this RfT document. Tenderers cannot rely on communication with any other person(s) with regard to the tender process.

It is the responsibility of the Tenderer to request any clarifications or additional information arising from analysis of this RfT. The Department's Contact Officer may stipulate that any request for clarification or additional information arising from analysis of this document be forwarded in writing. If a last enquiries date is specified, any request must be submitted before that date.

Where it is appropriate for the Principal to provide a written reply to any enquiry, and the matter is not considered by the Principal to be commercially sensitive or designated by the Tenderer as commercial in confidence, a clarification may be sent to all Tenderers.

CT 5 CONSORTIUM RESPONSES

If a Tenderer submits a bid in conjunction with any other person, or with the intention of acting, in future, in conjunction with any one or more other persons ("group members") in relation to this process the following applies:

- a) The Principal expects that a Tenderer will provide a description of the proposed legal structure and relationships that are proposed between tenderers and group members; and
- b) The Principal expects that tenderers will nominate one person as the preferred contact person for their company and all group members.

Notwithstanding any undertaking regarding confidentiality, by submitting a tender, The Tenderer agrees that the Principal may forward information relating to the Tenderer or the tender to the Australian Competition and Consumer Commission (ACCC) if the Principal reasonably suspects, or is notified by the ACCC that it reasonably suspects, that there is cartel conduct or unlawful collusion in relation to this tender process (whether or not the suspicion relates to the Tenderer).

CT 6 SUBMISSION OF TENDERS

If tenders are to be submitted electronically, it is recommended that the submission is uploaded at least two hours before the specified closing time.

If problems are encountered with uploading the submission to the SA Tenders and Contracts web site, the Tenderer should contact the SA Tenders and Contracts Helpdesk on (08) 8462 1401 as soon as possible and in any case, prior to the specified closing time.

If problems are encountered sending the submission to DIT by email, the Tenderer should ring the contact officer nominated on the tender document as possible and in any case, prior to the specified closing time.

The Tenderer's submission must comply with the following:

- a) the submission is lodged in accordance with the requirements stated on the cover sheet of this RfT document;
- b) all documents and schedules listed in CT Annexure A "Tender Submission" are included in the submission;
- c) the format and number of copies is as stated in CT Annexure A "Tender Submission";
- d) the submission is in English and prices are in Australian dollars;
- e) the submission includes a written acknowledgment of receipt of any amendments issued by the Principal; and
- f) any hard copy documents are sealed in an envelope or package, marked confidential and clearly identified as a submission for this RfT.

The time specified is the time applicable to South Australia, as defined at <https://www.australia.gov.au/time-zones-and-daylight-saving>. The Principal reserves the right to extend the tender closing date or time.

In the event of receipt of a submission after the closing date and time, a determination regarding its acceptability will be made in accordance with the Department's policy for late tenders.

If a Tenderer bases its tender on any assumptions in relation to the interpretation of the contract documentation, or qualifies their tender in any way, details of the assumption(s) or qualification(s) and any cost implications thereof must be included in the tender.

CT 7 PROBITY

Tenderers must:

- a) declare any actual or potential conflict of interest;
- b) prior to the completion of this procurement process, not seek to employ or engage the services of any person (including an advisor, consultant or employee) who has a duty to the Principal in relation to this process;
- c) not collude with any potential Tenderer;
- d) comply with all laws in force in South Australia applicable to the process, including the *Competition and Consumer Act 2010* (Cth);
- e) disclose whether acting as agent, nominee or jointly with another person and disclose the identity of the other person;
- f) not offer any incentive to, or otherwise attempt to influence, any employee of the Principal or any member of an evaluation committee at any time;
- g) not make any news releases or responses to media enquiries and questions pertaining to this process without the Principal's written approval; and
- h) not attempt to seek confidential information in respect of this tender process from the Principal's employees and others who have access to confidential information.

The Tenderer acknowledges that if it is awarded a contract from this tender process and if any matter warranted in this clause is found not to be true or not to be correct, the contractor will be in fundamental breach of the contract and the Principal may (at its discretion) terminate the contract and claim damages for breach of contract.

CT 8 ALTERNATIVE TENDERS¹

1. **AN ALTERNATIVE TENDER WILL NOT BE CONSIDERED UNLESS A CONFORMING TENDER IS OFFERED.**
2. A conforming tender is one that does not contain any departure from any part of the RfT including the Scope of Work, Specifications or Conditions of Contract.

For clarity, statements such as the following shall be treated as a departure:

- "Tender complies except as stated otherwise";
- "Except for minor items to be negotiated";
- "Except detailed in the Tender";
- "We have allowed for"; or
- "We have assumed".

Subject to submitting a conforming tender, the Tenderer may submit an Alternative Tenders.

3. An Alternative Tender shall contain details of departures from any parts of the RfT, including the Scope of Work, Specifications and Conditions of Contract.
 - i. The Tenderer shall be deemed to comply with the RfT in every respect except for the departures listed in a separate section of the tender titled "*Departures from the RfT*" per the template at Schedule A.

¹ Note: paragraph amended 1/11/17

- ii. The departures shall be detailed in the same order as the tender documents and relevant RfT clauses.
 - iii. Each departure shall include separate prices to enable the tender to be adjusted to comply with the RfT. Where a price is not identified or a non-financial adjustment is provided, the Principal will assume a 'worst case scenario' adjustment.
 - iv. Details of any technical, monetary or other advantage or disadvantage to the Principal shall be given.
4. Where there is an inconsistency (other than those properly listed as departures from the RfT) between a provision of the RfT and a provision of the tender (including supporting documentation), the provision of the RfT shall prevail. To the extent of the inconsistency, the provision of the tender shall have no force or effect.
5. Adjustment to the tender price will not be accepted for any item omitted from the list of departures.
6. The Principal is not obliged to accept all or any of the Departures contained in Schedule A.
7. A non-conforming tender, or portion thereof, if accepted, would be subject to all the other requirements of the Tender Documents, apart from the nominated and accepted departures.
8. Any of the Tenderer's standard conditions of tendering, supply, Contract of Sale or other standard terms shall be excluded completely from forming part of the conforming tender.

CT 9 TENDER ASSESSMENT AND NEGOTIATION

Tenders will be assessed in accordance with the Department's tender evaluation procedures and the criteria listed in CT Annexure B "Assessment of Tenders".

At any time prior to award of a contract, the Principal reserves the right to:

- a) conduct an assessment of the financial viability of a tenderer, either directly or through a third party;
- b) seek clarification of any aspect of a tender;
- c) seek the advice and / or assistance of external consultants regarding the assessment of tenders; and
- d) make enquiries of any person, company or organisation to ascertain information regarding any Tenderer and its tender.

If requested by the Principal or a third party acting as an agent of the Principal, selected Tenderer(s) must provide additional written information regarding their tender or their business. This information shall be submitted within the time stated and will be considered as part of the tender. Failure to submit the information in the time requested may result in the tender being set aside from further consideration. The Principal may request selected Tenderer(s) to submit a revision to their submission in response to an addition, deletion or other change to the requirements specified in the proposed contract documents.

Selected Tenderers (or their authorised representatives) may be required to attend an interview, workshop or meeting or enter into negotiations with the Principal. The Principal will record any agreements reached that are intended by the parties to be binding.

Tenderers are advised that the obligations outlined within the Procurement Services South Australia "International Obligations Guideline" apply to this tender process. Refer: <https://www.procurement.sa.gov.au/guidelines2/International-Obligations-Guideline.pdf>.

CT 10 ACCEPTANCE OF TENDER

The Tenderer agrees and acknowledges that the Principal, in its absolute discretion:

- a) is not obliged to accept any tender;
- b) is not obliged to accept the lowest priced tender;
- c) may reject any tender at any time; or
- d) may abandon this tender process at any time.

Nothing in this RfT document or any subsequent tender assessment or negotiation process is to be construed as creating a binding contract (express or implied) between the Principal and any Tenderer.

No legal relationship will exist between the Principal and any Tenderer unless and until the Principal has delivered (either by post, courier, hand delivery or facsimile) a written notice of acceptance of tender to the successful Tenderer at the address stated on the tender form or the parties execute a formal written contract.

Notification to a tenderer that it is the preferred tenderer will not constitute an acceptance of the tender but an invitation to negotiate.

No representation made by or on behalf of the Principal in relation to this RfT (or its subject matter) will be binding on the Principal unless that representation is expressly incorporated into the contract ultimately entered into between the Principal and the successful Tenderer.

CT 11 CONFIDENTIALITY

The Tenderer and the Principal may disclose information to any consultant engaged for the purpose of this process if the consultant is required to preserve the confidentiality of that information.

Information supplied by or on behalf of the Principal after the date of close of tenders is confidential and the Tenderer is obliged to maintain its confidentiality, unless indicated otherwise.

The Principal understands the need to keep commercial matters confidential in appropriate circumstances (including information submitted at the request of the Principal after the date of close of tenders), but reserves the right to disclose some or all of the contents of a tender submission:

- a) if required to do so by a constitutional convention;
- b) in order that the relevant Minister may discharge their duties and obligations to Parliament and the South Australian Government;
- c) to the Australian Competition and Consumer Commission (ACCC) or any other government authority having relevant jurisdiction, if the Principal reasonably suspects or is notified by the ACCC that it reasonably suspects, that there is cartel conduct or unlawful collusion in relation to this tender process (whether or not the suspicion relates to the Tenderer); and
- d) as required by law.

Any condition in a bid that purports to prohibit or restrict the Government's right to make such disclosures cannot be accepted.

CT 12 COPYRIGHT

The Tenderer licences the Principal to reproduce, for the purposes of this tender assessment process, the whole or any portion of the tender despite any copyright or other intellectual property right that may subsist in the tender.

Ownership in the documentation submitted by the Tenderer will be transferred to the Principal.

CT 13 COST OF PREPARATION OF BIDS

Tenderers are responsible for the cost of preparing and submitting a bid and all other costs arising out of the process, which includes any subsequent contract negotiation phase prior to the award of a contract.

CT 14 EMPLOYMENT OF EX-GOVERNMENT EMPLOYEES

The Principal will not accept the services of any former public sector employee, either directly or through a third party, who has received a separation package from the Government, for a period coinciding with the number of weeks of the payment to them as part of the package, from the effective date of the termination of their employment by resignation, where such engagement may breach the conditions under which the separation package was paid to the former public sector employee.

CT 15 DISCLOSURE OF GOVERNMENT CONTRACTS

Tenderers are to be aware that if a contract is entered into, the Principal may disclose that contract and/or information in relation to it in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request.

The Tenderer agrees that if it is successful, the contract may be disclosed on the South Australian Government's Contracts website <http://www.tenders.sa.gov.au> in accordance with Premier and Cabinet Circular 27 (PC 027), a copy of which is available from <http://dpc.sa.gov.au/documents/rendition/B17980>.

CT 16 STATE FEDERAL COOPERATION ON TRADE PRACTICES MATTERS

The Tenderer must submit with the tender a signed declaration, on the form provided, that:

- a) confirms that the tender is independent and that there has not been any unlawful collusion with any other tenderer or party in connection with this tender process; and
- b) to the extent known at the time of submission, clearly indicates the total value of the goods and/or services to be provided by sub-contractors.

Where the value of work to be provided by sub-contractors exceeds either \$1,000,000 (GST inc) or 25% of the total value of the tender, the tender submission must include a complete list of all sub-contractors, the value, and the nature of the goods and services to be provided under each sub-contract, to the extent known at the time of submitting the tender.

If a tender is submitted jointly with another party or parties then each joint Tenderer must provide the signed declaration.

The requirement for independence in sub-clause a) does not apply as between joint tendering parties. If a duly completed declaration form is not provided or if any part of the declaration is found to be false:

- a) The Principal may exclude the tender from consideration; and
- b) If a contract has been awarded in relation to this tender process, the contractor will be in fundamental breach of that contract (such breach going to the root of the contract) and the Principal may terminate that contract without any obligation on the Principal to make any payment.

CT 17 SOUTH AUSTRALIAN INDUSTRY PARTICIPATION POLICY²

The South Australian Industry Participation Policy ("IPP") is the high-level framework for delivery of the South Australian Government's objectives including:

1. promoting capable businesses based in South Australia being given full, fair and reasonable opportunity to participate in government contracts; and
2. meeting the requirements of the South Australian Industry Participation Policy, Procedural Guidelines, which operates under the IPP for projects valued over \$50million, by achieving critical training and employment outcomes.

Information regarding the SA Industry Participation Policy can be found at <https://www.industryadvocate.sa.gov.au/policy-and-resources>

This project will fall within the scope of the IPP. As a condition precedent to the State considering a Proposal, the Proponent must submit:

² Note: paragraph amended 18/02/2019

- (a) a Standard IPP Plan (as defined on the website) where the project is valued between \$550,000 and \$50 million; or
- (b) a Tailored IPP Plan (as defined on the website) where the project is valued over \$50 million.

The IPP website contains a link to the template Standard IPP Plan that must be submitted.

For information or assistance regarding the completion of the IPP Plan, please contact: Office of the Industry Advocate
Level 17, 30 Wakefield Street
Adelaide SA 5000
Tel: (08) 8226 8956
Email: oiia@sa.gov.au
Web: <https://www.industryadvocate.sa.gov.au/policy-and-resources>

CT 18 COMPLAINTS

If at any time during the tender process, a tenderer considers that it has been unfairly treated, the tenderer must first notify the Principal's Contact Person in writing. If the matter is not resolved, the tenderer may then contact the Principal's nominated procurement complaints officer below, and request in writing for the issue to be dealt with in accordance with the Principal's complaint management process.

Title: Manager Financial & Procurement, Contracts,
Policy & Compliance

Address: 83 Pirie Street, Adelaide, 5000
Email: DPTI.TenderSupplierComplaints@sa.gov.au
Phone: (08) 8343 2671

CT 19 SUPPLIER FEEDBACK

If you accessed this tender opportunity via the SA Tenders and Contracts website, in addition to feedback you may wish to provide directly to the issuing agency, you can also provide anonymous feedback using the survey tool on the website.

Your feedback may be provided, either:

- after you have downloaded the tender documentation but decided not to submit a tender; or
- at the end of the process following tender award, debrief or contract execution (as applicable).

If using the survey for the first time, additional information about the Supplier Feedback initiative is included on both websites. Otherwise, you can gain direct access the survey here: https://www.surveymonkey.com/s/SPB_Supplier_Feedback

CT 20 CONFLICT OF INTEREST

The Tenderer warrants that at the time of submitting its tender, it is not aware of any matters which could give rise to a real or perceived conflict of interest, except for any such matters disclosed within its tender. The Tenderer must disclose in its tender any matter which could give rise to a real or perceived conflict of interest during the tender process or during performance of the contract. In the event such a matter is disclosed, the Tenderer must also detail how it proposes to avoid or manage the conflict. If the Tenderer fails to disclose such a matter which a reasonable tenderer in its position should have been aware of, or its disclosure of such a matter is inaccurate or incomplete, then regardless of any subsequent dealings the Principal may:

- a) terminate negotiations with the Tenderer;
- b) terminate consideration of the Tenderer's tender; or
- c) terminate any contract between the Tenderer and the Principal in relation to the RfT or the underlying project,

without any obligation on the Principal to make any payment to the Tenderer.

**SCHEDULE A
DEPARTURES FROM THE RFT**

Item	Document	Reference	Heading	Departure	Explanation	Technical, monetary or other advantage or disadvantage	Price impact of departure to Conforming Tender Sum
1 (example)	Conditions of Contract	Clause 34.3	Claims	The Contractor shall provide notice immediately <u>within 5 working days</u> ...	The company may not be in a position to provide notice immediately.		-\$50000.00
2							
3							
Total Cost of Compliance							\$ [INSERT]

Tenderer's Declaration [DELETE ONE]

A. The Tenderer has submitted a confirming tender in accordance with the Conditions of Tender.

[OR]

A. The Tenderer has submitted a confirming tender in accordance with the Conditions of Tender.

B. The Tenderer has also submitted an Alternative Tender.

C. The Alternative Tender complies with the RFT in every respect except for the departures listed above and any statement elsewhere in the tender such as the following shall have no force or effect:

- Tender complies except as stated otherwise;
- Except for minor items to be negotiated;
- Except detailed in the Tender.