



ANNEX A

General Conditions of Tender
(Services)

Version 08/1 – September 2008

Contents

INTRODUCTORY PROVISIONS	1
1. DEFINITIONS AND INTERPRETATION	1
TENDERS	4
2. REQUEST	4
3. TENDERS	4
4. HOW TO SUBMIT TENDERS	4
5. WHEN TO SUBMIT TENDERS	5
6. EFFECT OF SUBMITTING A TENDER	5
7. TENDERER'S RESPONSIBILITIES	6
8. ALTERNATIVE TENDERS	6
9. TENDER PROCESS	7
TENDER EVALUATION	7
10. OPENING OF TENDERS	7
11. NON-CONFORMING TENDERS	7
12. EVALUATION OF TENDERS	7
13. TENDER MODIFICATION	8
14. ACCEPTANCE AND REJECTION	8
15. POST-TENDER FEEDBACK	9
OTHER MATTERS	9
16. PROBITY	9
17. CONFIDENTIALITY	10
18. ANNOUNCEMENTS AND PUBLICITY	11
19. TENDERER'S PERSONNEL	11
20. OFFICIAL NOTICES	11
21. APPROVALS	12
22. GOVERNING LAW	12

General Conditions of Tender (Services)

INTRODUCTORY PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions apply to terms used in these Conditions except when the result is absurd, impossible or obviously unintended:

“Approval” means an approval, consent or permission.

“Business Day” means a day which is not a Saturday, Sunday or public or special holiday in Ipswich, Queensland.

“Claim” means an action, proceeding, demand, liability, obligation, cost (including legal costs on a full indemnity basis), loss, damage, expense and claim, including those arising under the terms of a compromise or settlement.

“Confidential Information” means all information of or relating to Council or which is disclosed by Council which Council does not explicitly identify as not being confidential and, except as otherwise agreed in writing, includes without limitation:

- (a) information disclosed during the Tender Process;
- (b) Council’s financial and strategic information and methods of conducting business;
- (c) Council’s Intellectual Property Rights; and
- (d) information which has been derived from or with the use of any other Confidential Information.

“Conditions” means these *General Conditions of Tender*.

“Conflict of Interest” means a state of affairs, or combination of circumstances, which could reasonably be suspected to:

- (a) compromise a Tenderer’s ability to submit a Tender in good faith and objectively;
- (b) give rise to the risk of such a compromise; or
- (c) cause a reasonable member of the public to apprehend such a compromise or risk.

“Contract” means a contract on the terms provided in or under the General Conditions of Contract.

“General Conditions of Contract” means the *General Conditions of Contract (Services)* (Version 08/1 – September 2008) published by Council, which can be accessed on Council’s website at www.ipswich.qld.gov.au.

“Intellectual Property Rights” means all copyright, registered and unregistered trade marks and service marks, patents and other proprietary intellectual property rights subsisting anywhere in the world, but does not include moral rights under the *Copyright Act 1968* or corresponding rights elsewhere in the world.

“Letter of Acceptance” means a letter or document given by Council to a Tenderer notifying the Tenderer of Council’s acceptance of a Tender submitted by that Tenderer.

“Official Notice” means a notice, notification or other communication which:

- (a) a Tenderer is required or permitted to give to Council under these Conditions; or
- (b) Council is required or permitted to give to a Tenderer under these Conditions, if these Conditions do not expressly, or by necessary intention, provide how the notice, notification or communication is to be given (other than in clause 20).

“Personnel” means:

- (a) in relation to a Tenderer:
 - (i) its employees, officers, agents and subcontractors;
 - (ii) the employees, officers and agents of the Tenderer’s agents and subcontractors; and
 - (iii) any other person for whose acts, omissions or conduct the Tenderer is in law responsible; and
- (b) in relation to Council – its delegates, employees, officers and agents.

“Purchasing Arrangement” means the same thing as in the *Local Government Finance Standard 2005*.

“Request” means an invitation for tenders made by Council under s.484 of the *Local Government Act 1993* or s.20 of the *Local Government Finance Standard 2005* which refers to these Conditions.

“Services” means all services to be supplied by a Tenderer (if Council accepts the Tenderer’s Tender) under the Contract and, if the context allows, also includes services supplied by the Tenderer purportedly under the Contract.

“Specification” means any specification for Services in, accompanying or referred to in the Request.

“Statutory Requirement” means an obligation under any applicable:

- (a) Act of Parliament;
- (b) regulation, order, by-law, rule, proclamation or other statutory instrument or subordinate legislation under any Act of Parliament; or
- (c) approval, consent, licence, authority, permit, notice, order, direction, instrument or requirement issued, given or made under any of the above.

“Tender” means a tender submitted in response to the Request.

“Tender Form” means the form specified for Tenders in, or referred to in, the Request.

“Tender Process” means the process of making the Request, inviting Tenders, accepting and evaluating Tenders and deciding whether to accept or reject Tenders.

“Tenderer” means a person specified in a Tender who submits the Tender.

1.2 Other definitions of terms may be elsewhere in these Conditions.

1.3 In the interpretation of these Conditions, unless it is not consistent with the context:

- (a) a reference to a successful Tenderer or to a successful Tender means a Tenderer, or a Tender submitted by a Tenderer, to whom Council gives a Letter of Acceptance under paragraph 14.3(a);

- (b) a reference to an unsuccessful Tenderer or to an unsuccessful Tender means a Tenderer, or a Tender submitted by a Tenderer, to whom Council gives a notification under paragraph 14.4(a);
 - (c) if the day on which any act, matter or thing is to be done under these Conditions is not a Business Day, the act, matter or thing must be done on the next Business Day;
 - (d) a reference to dollars or \$ means Australian dollars and all amounts payable under these Conditions are payable in Australian dollars;
 - (e) a reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment and any subordinate legislation or regulations issued under that legislation or legislative provision;
 - (f) a reference to a particular Act or statutory instrument, or to a particular provision of one, is taken to include:
 - (i) a reference to that Act, statutory instrument or provision as amended from time to time;
 - (ii) a reference to any Act, statutory instrument or provision into which the original Act, statutory instrument or provision is relocated, consolidated or re-enacted from time to time;
 - (iii) a reference to any Act, statutory instrument or provision which (after the repeal or expiry of the original Act, statutory instrument or provision) deals with the same, substantially similar or the most closely similar subject matter as the original Act, statutory instrument or provision; and
 - (iv) any other Act, statutory instrument or provision which applies to or affects the interpretation of any Act, statutory instrument or provision referred to above;
 - (g) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
 - (h) an expression importing any type of person includes a natural person, company, trust, partnership, joint venture, association, body corporate and governmental agency;
 - (i) another part of speech or other grammatical form of a defined term has a corresponding meaning;
 - (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders; and
 - (k) a reference to the word "include" or "including" (or to another word meaning much the same thing) is to be interpreted without limitation.
- 1.4 Headings, and any table of contents, are inserted for convenience only and cannot be used to help interpret these Conditions.
- 1.5 A provision of these Conditions is not to be read to the disadvantage of a party just because that party drafted these Conditions or the provision or asked for or insisted on:
- (a) the inclusion of the provision in these Conditions; or
 - (b) how the provision was to be drafted when included in these Conditions.

TENDERS

2. REQUEST

2.1 Council requests Tenders in response to the Request.

3. TENDERS

3.1 A Tenderer must ensure that a Tender complies with these Conditions and the Request.

3.2 A Tender must be in accordance with the Tender Form.

3.3 A Tenderer must:

- (a) respond to every requirement or question in the Tender Form;
- (b) complete the Tender Form by correctly following all directions and instructions in the Tender Form (including directions and instructions requiring the inclusion in the Tender of additional information or documents); and
- (c) clearly specify any departures from the Request or the Specification which form part of the Tender.

3.4 A departure which is not clearly specified as required by paragraph 3.3(c) does not form part of a Tender.

3.5 A Tender must be written, typed or word processed in English.

3.6 Each amount of money specified in a Tender must be specified in Australian dollars.

4. HOW TO SUBMIT TENDERS

4.1 A Tender must be enclosed in a sealed envelope containing:

- (a) the original of the fully completed and signed Tender,
- (b) 2 full copies of the original, and
- (c) 2 soft copies (2 CD's).

4.2 A Tender must be submitted either by personal delivery or by post.

4.3 A Tender submitted by personal delivery must be delivered into Council's tender box on the ground floor of Council's administration building at 45 Roderick Street, Ipswich, Queensland. The envelope containing the Tender must be endorsed as follows:

Tender Name (as detailed in the Request)

Tender No. (as detailed in the Request)

Chief Executive Officer

Ipswich City Council

Tender Box – Ground Floor

45 Roderick Street

Ipswich Qld 4305

- 4.4 A Tender submitted by post must be sent by prepaid post to the address shown below. The envelope containing the Tender must be endorsed as follows:

Tender Name (as detailed in the Request)

Tender No. (as detailed in the Request)

Chief Executive Officer

Ipswich City Council

PO Box 191

Ipswich Qld 4305

5. WHEN TO SUBMIT TENDERS

- 5.1 A Tender must be submitted by the closing time and date specified in the Request.
- 5.2 A purported Tender not in Council's tender box by that closing time and date will not be considered.

6. EFFECT OF SUBMITTING A TENDER

- 6.1 When a Tender is submitted, it constitutes an offer by the Tenderer to enter into the Contract with Council.
- 6.2 The Tenderer may not revoke the Tender (or that offer) before:
- (a) the closing time and date specified in the Request; or
 - (b) the later time when Council has either accepted or given the Tenderer notice of the rejection of the Tender,
- except with Council's approval.

- 6.3 A Tender, and any document given to Council with or in connection with a Tender, becomes Council's property on the earlier of:
- (a) when the Tender is submitted; or
 - (b) when the document is given to Council,
- but this does not mean that Intellectual Property Rights belonging to a person other than Council in the Tender or document become Council's property.

7. TENDERER'S RESPONSIBILITIES

- 7.1 It is the responsibility of the Tenderer to:
- (a) read and familiarise itself with the Request, these Conditions and each document referred to in the Request or in these Conditions;
 - (b) be satisfied about local conditions and facilities that may impact on the Tenderer's ability to submit the Tender, supply Services and satisfy other specified requirements;
 - (c) carry out its own investigations about the feasibility of the Tender and rely on that investigation; and
 - (d) pay its own expenses of investigating, preparing and submitting a Tender.
- 7.2 A person who spends money, makes commitments or incurs liabilities on the basis of the Request or a Tender does so at the person's own risk and expense.
- 7.3 If a prospective Tenderer requires information or clarification concerning the Request:
- (a) the prospective Tenderer must direct the enquiry to the contact officer named in the Request;
 - (b) Council will not be bound by any information or clarification provided orally or by email;
 - (c) Council will be bound only by information or clarification provided in writing and signed on behalf of Council; and
 - (d) if after seeking information or clarification the prospective Tenderer still has any doubt about the meaning of any part of the Request, the Tenderer must include in its Tender a statement:
 - (i) identifying the uncertainty; and
 - (ii) specifying the interpretation on which the Tender is based.
- 7.4 A person may not claim from Council any expenses or extension of time on the grounds that insufficient or ambiguous information was given in the Request.

8. ALTERNATIVE TENDERS

- 8.1 A Tenderer may submit a Tender ("Alternative Tender") on the basis of an alternative to the Request or the Specifications, including:
- (a) brands or models alternative to any brands or models specified in or under the Request or the Specifications which, in the opinion of the Tenderer, are at least equivalent to those specified brands or models; or

(b) an alternative technical and innovative solution.

8.2 A Tenderer submitting an Alternative Tender must include in the Tender details of the benefits to Council of the alternative.

9. TENDER PROCESS

9.1 Council's conduct of the Tender Process does not give rise to any legal or equitable relationship other than the contractual relationship arising under these Conditions.

9.2 Council may decide to abandon the Tender Process at any time.

9.3 A Tenderer or prospective Tenderer may not make a Claim against Council for any matter arising out of the Tender Process, including but not limited to a failure by Council:

- (a) to comply with these Conditions, either generally or in relation to a Tender submitted by that Tenderer or by another Tenderer; or
- (b) to exercise a right under these Conditions, either generally or in relation to a Tender submitted by that Tenderer or by another Tenderer.

TENDER EVALUATION

10. OPENING OF TENDERS

10.1 After the closing time and date specified in the Request, the Tenders will be publicly opened.

10.2 On the opening of the Tenders, particulars of the Tenders may at Council's discretion be read out. The only exception is any information in a Tender which is clearly marked "not for public disclosure".

11. NON-CONFORMING TENDERS

11.1 If the requirements of the Request and these Conditions have not been complied with in relation to a Tender ("Non-Conforming Tender"), Council:

- (a) may decide not to consider the Non-Conforming Tender; but
- (b) assumes no obligation to do so and may nevertheless proceed to consider the Non-Conforming Tender.

12. EVALUATION OF TENDERS

12.1 Council will evaluate Tenders on the basis of:

- (a) any evaluation criteria set out in the Request;
- (b) the criteria in s.481 of the *Local Government Act 1993*, which are:
 - (i) open and effective competition;
 - (ii) value for money;

- (iii) encouragement of the development of competitive local business and industry;
 - (iv) environmental protection; and
 - (v) ethical behaviour and fair dealing; and
- (c) other matters that Council considers relevant.

12.2 Council may decide the weight that is to be given to the matters on the basis of which it evaluates Tenders.

12.3 Council may in evaluating a Tender:

- (a) require a presentation from the Tenderer;
- (b) interview a Tenderer or the Tenderer's Personnel;
- (c) contact referees for a Tenderer;
- (d) carry out investigations concerning a Tenderer, a Tenderer's Tender or Personnel; and
- (e) take into account the information obtained by Council from doing any of the above.

12.4 Council may negotiate with a Tenderer in an endeavour to reach an agreement or compromise concerning any matter covered by their Tender.

13. TENDER MODIFICATION

13.1 Before making a decision on Tenders, Council may invite all Tenderers to modify their Tenders if Council decides to change the Request or the Specification.

14. ACCEPTANCE AND REJECTION

14.1 Council may:

- (a) accept one Tender, or more than one Tender, for the whole of Council's requirements; or
- (b) accept one Tender, or more than one Tender, for a portion of Council's requirements, and, in doing so, may:
- (c) accept a Tender that Council considers to present the best solution (even if the Tender is an Alternative Tender or a Non-Conforming Tender); and
- (d) accept a Tender which is not the lowest Tender.

14.2 Council may decide not to accept any Tender.

14.3 If Council accepts a Tender:

- (a) it will give the Tenderer a Letter of Acceptance; and
- (b) the Contract then comes into existence between Council and the Tenderer.

14.4 If Council decides not to accept a Tender:

- (a) it will notify the Tenderer that they have been unsuccessful; but

- (b) any failure by Council to give, or delay by Council in giving, that notification does not confer any legal rights on the Tenderer.

15. POST-TENDER FEEDBACK

15.1 Council may provide an information session for unsuccessful Tenderers.

15.2 At an information session Council may reveal:

- (a) the name of, and the total price submitted by, the successful Tenderer;
- (b) the names of, and the total prices submitted by, other Tenderers; and
- (c) the reasons for unsuccessful Tenders not being accepted.

15.3 The giving of reasons for unsuccessful Tenders not being accepted at an information session does not:

- (a) imply an obligation on Council's part to give those reasons;
- (b) mean that the reasons given are binding on Council; or
- (c) limit the reasons which may be given by Council in any proceedings concerning the Tenders.

OTHER MATTERS

16. PROBITY

16.1 A Tenderer will not directly or indirectly offer or give to:

- (a) Council;
- (b) any officer or employee of Council; or
- (c) any parent, spouse, child, relative or associate of an officer or employee of Council, any commission, inducement, gift or reward which is calculated to, or could reasonably be expected as tending to, influence decisions made or to be made in connection with the Tenders by Council or any person representing Council.

16.2 A Tenderer will not counsel, procure, assist or encourage any other person to do a thing which would breach subclause 16.1 if it had been done by the Tenderer.

16.3 A Tenderer warrants that:

- (a) its Tender is in all respects an independent Tender; and
- (b) no collusion has taken place between the Tenderer and any other Tenderer (or prospective Tenderer) in connection with:
 - (i) the Tenderer's Tender;
 - (ii) another Tenderer's Tender; or
 - (iii) a decision by another prospective Tenderer not to submit a Tender.

16.4 A Tenderer warrants that, to the best of its knowledge, no Conflict of Interest exists at the time of the submission of the Tenderer's Tender.

16.5 If a Conflict of Interest arises before Council has notified the Tenderer of the acceptance or rejection of the Tenderer's Tender, the Tenderer must immediately give notice of it to Council.

17. CONFIDENTIALITY

17.1 A Tenderer must not, and must ensure that its Personnel do not, use or disclose Confidential Information except if and to the extent that:

- (a) if Council consents to the use or disclosure;
- (b) the use or disclosure is required by law;
- (c) the use or disclosure is required in order for the Tenderer to comply with these Conditions;
- (d) the Confidential Information is disclosed by the Tenderer to any of its Personnel who need to know the Confidential Information in order for the Tenderer to submit a Tender and:
 - (i) the Tenderer makes those Personnel aware that the Confidential Information is confidential, must be kept confidential and must not be used or disclosed except if and as allowed by these Conditions; and
 - (ii) if required by Council, the Tenderer obtains from those Personnel a confidentiality deed in a form acceptable to Council; or
- (e) the Confidential Information is disclosed on a bona fide basis by the Tenderer to a lawyer, accountant or auditor for the Tenderer.

17.2 If:

- (a) the Tenderer uses or discloses Confidential Information;
 - (b) the Confidential Information comes into the possession of, or to the knowledge of, a person as a result of the Tenderer's use or disclosure of the Confidential Information (whether permitted by, or in breach of, these Conditions); and
 - (c) that person uses or discloses the Confidential Information in a way that would have constituted a breach of these Conditions had that use or disclosure been made by the Tenderer,
- the Tenderer is liable in relation to that last use or disclosure as if it had been made by the Tenderer personally.

17.3 The Tenderer must, on Council's written demand, give to Council any documents or other media in its possession, power or control containing any of Confidential Information.

17.4 The Tenderer acknowledges that Council may be required to disclose information concerning the Tenderer or a Tender in order to comply with (or to enhance compliance with) Statutory Requirements, including those arising under the *Freedom of Information Act 1992* and the *Local Government Act 1993*. The Tenderer agrees not to make any claim against Council in connection with any such disclosure.

18. ANNOUNCEMENTS AND PUBLICITY

18.1 The Tenderer must:

- (a) not either itself or through its Personnel disclose to the media any information regarding a Tender or the Request or anything done in connection with the Request;
- (b) refer all enquiries from the media relating to any matter regarding a Tender or the Request or anything done in connection with the Request to Council as soon as possible after receiving such an enquiry; and
- (c) notify Council immediately on becoming aware of any event arising in the course of a Tender or the Request or anything done in connection with the Request which may receive media attention.

19. TENDERER'S PERSONNEL

19.1 A Tenderer will:

- (a) ensure that the Tenderer's Personnel comply with the Tenderer's obligations under these Conditions; and
- (b) be liable for the acts, omissions and conduct of the Tenderer's Personnel as if they were the personal acts, omissions or conduct of the Tenderer.

20. OFFICIAL NOTICES

20.1 An Official Notice to the Tenderer is taken to have been effectively and properly given only if it is in writing, signed by or on behalf of Council and:

- (a) delivered to any street address for the Tenderer specified in the Tender or any additional or substitute street address that the Tenderer has notified to Council for the purpose;
- (b) sent by prepaid post to any street address or postal address for the Tenderer specified in the Tender or any additional or substitute street address or postal address that the Tenderer has notified to Council for the purpose;
- (c) sent by fax transmission to any fax number for the Tenderer specified in the Tender or any additional or substitute fax number that the Tenderer has notified to Council for the purpose;
- (d) if the Tenderer is or includes an individual – delivered to that individual; or
- (e) if the Tenderer is or includes a company – served in a way provided by s.109X of the *Corporations Act 2001*.

20.2 An Official Notice to the Tenderer is taken to have been given at the following time:

- (a) if it is delivered – when it is delivered;
- (b) if it is sent by prepaid post to an address in Australia – 2 Business Days after it is properly addressed and posted;
- (c) if it is sent by prepaid post to an address outside Australia – 7 Business Days after it is properly addressed and posted;

- (d) if it is sent by fax between the hours of 9am and 5pm on a Business Day – at the time at which, according to a report produced by the machine from which it was sent, it was successfully transmitted in full to the correct fax number; or
- (e) if it is sent by fax before 9am or after 5pm on a Business Day, or on a day which is not a Business Day – the next time it is 9am on a Business Day but only if, according to a report produced by the machine from which it was sent, it was successfully transmitted in full to the correct fax number.

20.3 An Official Notice to Council is taken to have been effectively and properly given only if it is in writing, signed by or on behalf of the Tenderer and served under s.1107 of the *Local Government Act 1993*.

21. APPROVALS

21.1 If these Conditions provide or allow for Council to give an Approval:

- (a) the Approval is not taken to have been given unless it is given in writing and signed by a delegate of Council having authority to give the Approval;
- (b) if the Approval is given, it may be given on conditions, including conditions that:
 - (i) operate as conditions precedent to the Approval (in which case the Approval is not taken to have been given unless those conditions are satisfied); or
 - (ii) require the Tenderer to do something or refrain from doing something (in which case the Approval is not taken to have been given unless the Tenderer complies with those conditions);
- (c) council is not obliged to give the Tenderer any reasons for a decision about the Approval (including a decision to give the Approval, to impose conditions on an Approval or not to give the Approval) unless these Conditions say otherwise; and
- (d) the decision about the Approval is to be made in the absolute discretion of Council unless these Conditions say otherwise.

21.2 Whenever these Conditions refer, in words or to the effect, to a matter or thing being to the “satisfaction” of Council, that means to the satisfaction of Council in its absolute discretion.

22. GOVERNING LAW

22.1 These Conditions are governed by the laws of Queensland.

22.2 The courts and tribunals of Queensland at Ipswich and Brisbane, and the courts and tribunals of appeal from the courts and tribunals of Queensland, have non-exclusive jurisdiction to deal with any dispute concerning or under these Conditions:

- (a) within their respective jurisdictional limits as regards the subject matter of the dispute, the amount involved in the dispute and the relief sought; and
- (b) without regard to the geographical or territorial jurisdictional limits that would otherwise apply.