



**REGIONAL COUNCIL**

**GENERAL  
CONDITIONS  
OF OFFER**

Version 2.1 January 2013

# General Conditions of Offer (Goods & 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 the Lockyer Valley, 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 Offer 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 Offer*.

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

- (a) compromise an Offeror’s ability to submit an Offer 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.

“**Goods**” means all goods to be supplied by an Offeror (if Council accepts the Offeror’s Offer).

“**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.

“**Offer Validity Period**” means offers must remain valid and open until:

- (a) 30 days have elapsed from submission of the offer;
- (b) the expiry of a different period of validity as requested or notified in the Request for Offer; or
- (c) Council advises the Offeror that it has been unsuccessful.

“**Offeror**” means a person specified in an Offer who submits the Offer.

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

- (a) an Offeror is required or permitted to give to Council under these Conditions; or
- (b) Council is required or permitted to give to an Offeror 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 an Offeror:

- (i) its employees, officers, agents and subcontractors;
  - (ii) the employees, officers and agents of the Offeror’s agents and subcontractors; and
  - (iii) any other person for whose acts, omissions or conduct the Offeror is in law responsible;
- and

(b) in relation to Council – its delegates, employees, officers and agents.

**“Purchase Order”** means an official document issued by Council under which Council orders Goods and Services.

**“Offer”** means an offer submitted in response to the Request.

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

**“Request”** means an invitation for offers made by Council under the *Local Government Act 2009* which refers to these Conditions.

**“Services”** means all services to be supplied by an Offeror (if Council accepts the Offeror’s Offer).

**“Specification”** means any specification for Goods or 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.

**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) 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;
- (b) a reference to dollars or \$ means Australian dollars and all amounts payable under these Conditions are payable in Australian dollars;

(c) 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;

(d) 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;

(e) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;

(f) an expression importing any type of person includes a natural person, company, trust, partnership, joint venture, association, body corporate and governmental agency;

(g) another part of speech or other grammatical form of a defined term has a corresponding meaning;

(h) 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

(i) 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.

## **OFFERS**

### **2. REQUEST**

**2.1** Council invites Offers in response to the Request.

### **3. OFFERS**

**3.1** An Offeror must ensure that an Offer complies with these Conditions and the Request.

**3.2** An Offer must be in any form required by the Request.

**3.3** An Offeror must clearly specify any departures from the Request or the Specification which form part of the Offer. A departure which is not clearly specified does not form part of an Offer.

**3.4** An Offer must be written, typed or word processed in English.

**3.5** Each amount of money specified in an Offer must be specified in Australian dollars.

### **4. SUBMITTING OFFERS**

**4.1** An Offer must be submitted by personal delivery, by email, by post or by fax to any delivery address, email address, postal address or fax number specified in the Request. The Offer must refer to any reference number specified in the Request.

**4.2** An Offer must be submitted by the closing time and date specified in the Request.

**4.3** A purported Offer not received by Council by that closing time and date may not be considered at the absolute discretion of Council.

**4.4** Offers will not be opened publicly, unless otherwise specified in the Request.

### **5. EFFECT OF SUBMITTING AN OFFER**

**5.1** When an Offer is submitted, it constitutes an offer by the Offeror to supply the Goods and Services to Council at the price and on the terms specified in the Offer.

**5.2** The Offeror may not revoke the Offer (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 Offeror notice of the rejection of the Offer,

except with Council's approval.

**5.3** An Offer, and any document given to Council with or in connection with an Offer, becomes Council's property on the earlier of:

(a) when the Offer 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 Offer or document become Council's property.

**5.4** In submitting an Offer, the Offeror is deemed to have read and agreed to the LVRC General Conditions of Contract.

## **6. OFFEROR'S RESPONSIBILITIES**

**6.1** It is the responsibility of the Offeror to:

(a) read and familiarise itself with the Request, these Conditions and each document referred to in the Request or in these Conditions, and in submitting an Offer, the Offeror is deemed to have read and agreed to these Conditions of Offer;

(b) be satisfied about local conditions and facilities that may impact on the Offeror's ability to submit the Offer, supply Goods and Services and satisfy other specified requirements;

(c) carry out its own investigations about the feasibility of the Offer and rely on that investigation; and

(d) pay its own expenses of investigating, preparing and submitting an Offer.

**6.2** A person who spends money, makes commitments or incurs liabilities on the basis of the Request or an Offer does so at the person's own risk and expense.

**6.3** If a prospective Offeror requires information or clarification concerning the Request:

(a) the prospective Offeror 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;

(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 Offeror still has any doubt about the meaning of any part of the Request, the Offeror must include in its Offer a statement:

(i) identifying the uncertainty; and

(ii) specifying the interpretation on which the Offer is based.

**6.4** 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.

## **7. ALTERNATIVE OFFERS**

**7.1** An Offeror may submit an Offer ("**Alternative Offer**") 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 Offeror, are at least equivalent to those specified brands or models; or

(b) an alternative technical and innovative solution.

**7.2** An Offeror submitting an Alternative Offer must include in the Offer details of the benefits to Council of the alternative.

## **8. OFFER PROCESS**

**8.1** Council's conduct of the Offer process does not give rise to any legal or equitable relationship other than the contractual relationship arising under these Conditions.

**8.2** Council may decide to abandon the Offer Process at any time.

**8.3** An Offeror or prospective Offeror may not make a Claim against Council for any matter arising out of the Offer Process, including but not limited to a failure by Council:

(a) to comply with these Conditions, either generally or in relation to a Offer submitted by that Offeror or by another Offeror; or

(b) to exercise a right under these Conditions, either generally or in relation to an Offer submitted by that Offeror or by another Offeror.

## **OFFER EVALUATION**

### **9. NON-CONFORMING OFFERS**

**9.1** If the requirements of the Request and these Conditions have not been complied with in relation to an Offer ("**Non-Conforming Offer**"), Council:

(a) may decide not to consider the Non-Conforming Offer; but

(b) assumes no obligation to do so and may nevertheless proceed to consider the Non-Conforming Offer.

### **10. EVALUATION OF OFFERS**

**10.1** Council will evaluate Offers on the basis of:

(a) any evaluation criteria set out in the Request;

(b) the principles in s106 of the *Local Government Act 2009*, which are:

(i) open and effective competition;

(ii) value for money;

(iii) 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.

**10.2** Council may decide the weight that is to be given to the matters on the basis of which it evaluates Offers.

**10.3** Offers will be evaluated in accordance with the Evaluation Criteria in the request document.

Where evaluation criteria are not stated in the Request, the minimum standard criteria to be applied are:

- a) Cost;
- b) Delivery lead time;
- c) Conformance to specifications.

**10.3** Council may in evaluating an Offer:

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

**10.4** Council may negotiate with an Offeror in an endeavour to reach an agreement or compromise concerning any matter covered by their Offer.

## **11. OFFER MODIFICATION**

**11.1** Before making a decision on Offers, Council may invite all Offerors to modify their Offers if Council decides to change the Request or the Specification.

## **12. ACCEPTANCE AND REJECTION**

**12.1** Council may:

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

**12.2** Council may decide not to accept any Offer.

**12.3** Council may accept an Offer by giving the Offeror a Purchase Order for the Goods and Services.



## OTHER MATTERS

### 13. PROBITY

**13.1** An Offeror 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 Offers by Council or any person representing Council.

**13.2** An Offeror will not counsel, procure, assist or encourage any other person to do a thing which would breach subclause 13.1 if it had been done by the Offeror.

**13.3** An Offeror warrants that:

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

**13.4** An Offeror warrants that, to the best of its knowledge, no Conflict of Interest exists at the time of the submission of the Offeror's Offer.

**13.5** If a Conflict of Interest arises before Council has notified the Offeror of the acceptance or rejection of the Offeror's Offer, the Offeror must immediately give notice of it to Council.

### 14. CONFIDENTIALITY

**14.1** An Offeror 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 Offeror to comply with these Conditions;
- (d) the Confidential Information is disclosed by the Offeror to any of its Personnel who need to know the Confidential Information in order for the Offeror to submit an Offer and:

(i) the Offeror 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 Offeror 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 Offeror to a lawyer, accountant or auditor for the Offeror.

**14.2 If:**

(a) the Offeror 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 Offeror'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 Offeror, the Offeror is liable in relation to that last use or disclosure as if it had been made by the Offeror personally.

**14.3** The Offeror 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.

**14.4** The Offeror acknowledges that Council may be required to disclose information concerning the Offeror or an Offer in order to comply with (or to enhance compliance with) Statutory Requirements, including those arising under the *Right to Information Act 2009* and the *Local Government Act 2009*. The Offeror agrees not to make any claim against Council in connection with any such disclosure.

## **15. ANNOUNCEMENTS AND PUBLICITY**

**15.1** The Offeror must:

(a) not either itself or through its Personnel disclose to the media any information regarding an Offer or the Request or anything done in connection with the Request;

(b) refer all enquiries from the media relating to any matter regarding an Offer 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 an Offer or the Request or anything done in connection with the Request which may receive media attention.

## **16. OFFEROR'S PERSONNEL**

### **16.1** An Offeror will:

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

## **17. OFFICIAL NOTICES**

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

### **17.2** An Official Notice to the Offeror 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.

### **17.3** 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 Offeror and served under the *Local Government Act 2009*.

## **18. APPROVALS**

**18.1** 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 Offeror to do something or refrain from doing something (in which case the Approval is not taken to have been given unless the Offeror complies with those conditions);
- (c) council is not obliged to give the Offeror 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.

**18.2** 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.

## **19. GOVERNING LAW**

**19.1** These Conditions are governed by the laws of Queensland.

**19.2** The courts and tribunals of Queensland at Gatton 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.

## **20. SEVERABILITY**

**20.1** If any term or terms contained in these Terms and Conditions is, or are, held by a court of competent jurisdiction to be invalid or unenforceable, then such illegal or invalid term will be severable, and all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.