

## Tender Conditions

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### **PART A Not Used.**

### **PART B Tender Conditions**

#### **B1 GENERAL**

- 1.1 Downer wishes to engage a contractor to enter into an Agreement to perform the Works.
- 1.2 Downer may elect not to proceed with the awarding of this Tender at any stage during the Tender process, in its sole discretion.
- 1.3 Tenderers are responsible for all costs incurred in the undertaking of Site inspections and for the preparation and lodgement of the Tender and for any subsequent negotiations with Downer.
- 1.4 All information contained in this Request for Tender is confidential and may not be discussed by the Tenderer with third parties except with the prior written consent of Downer or where disclosure is compelled by law.

#### **B2 CONFORMING TENDERS**

- 2.1 Downer or its nominee in its absolute discretion may (but is not bound to) reject any Tender which is incomplete, or which does not fully comply with the terms of the Tender Documents.
- 2.2 To fully comply with the terms of the Request for Tender:
  - (a) Not used.
  - (b) Tenders must not contain any alterations or erasures and must be fully legible;
  - (c) all Tenders must be executed as indicated below:
    - (i) in the case of a corporation, in accordance with section 127 of the *Corporations Act 2001 (Cth)*;
    - (ii) in the case of a firm (including a firm trading under a business, trade name or partnership), by the signature of each proprietor of the firm, or in the case of more than three proprietors, by the signature of proprietors authorised to bind the firm in contract; or
    - (iii) in the case of an individual by the signature of the individual.
- 2.3 The Tenders shall include details of the Tenderer in respect of:
  - (a) any trading or business name, if different from its registered name;
  - (b) related bodies corporate of the Tenderer within the meaning of section 50 of the *Corporations Act 2001 (Cth)*; and
  - (c) a foreign firm or company, details of its registration, incorporation and place of business in Australia and the name of any Australian representative.
- 2.4 Not used.

#### **B3 TENDERER TO INFORM ITSELF FULLY**

- 3.1 By submitting a Tender, each Tenderer is deemed to have:
  - (a) acquainted itself with all aspects of this Request for Tender and all other documents included or referred to in it;
  - (b) examined all other information provided by Downer or on behalf of Downer to Tenderers in connection with this Request for Tender;
  - (c) examined all other information relevant to the risk, contingencies and circumstances that could affect the Tender and which would be available to a competent Tenderer on reasonable enquiry;
  - (d) examined the Agreement and made due allowance in its Tender for complying with all of the obligations of the Contractor (as defined under the Agreement) under the Agreement;
  - (e) fully investigated and informed itself of all requirements relevant to performance of the Works under the Agreement;
  - (f) requested clarification in accordance with clause B3.4 of the Tender Conditions in respect of any discrepancy, error or omission in the Tender Documents;
  - (g) carried out an adequate inspection of the Site;
  - (h) satisfied itself as to the completeness, correctness and sufficiency of its Tender to meet all the requirements of the Request for Tender;
  - (i) acknowledged that the design documents may not be finalised and may be, subject to entry into the Agreement, developed under that document;
  - (j) acknowledged that Downer reserves the right to engage third parties to review material

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produced by the Tenderer and advise Downer in relation thereto;

- (k) Not used
- (l) acknowledged that the Works are still subject to approval by the relevant authorities and subject to change and that any indicative program provided with this Request for Tender is indicative only and subject to change; and
- (m) acknowledged that Downer does not warrant the accuracy or reliability of any Tender Information Documents, which are provided solely for the information of the Tenderer and warranted that the Tenderer has not, in lodging its Tender, relied upon any Tender Information Documents,

before and as a condition of submitting its Tender and participating in further negotiations with Downer.

3.2 Not used.

3.3 In addition to the material disclosed with the Request for Tender, Downer may provide any additional information affecting the Tender which will be done by issuing a Tender Clarification Notice. Downer will issue such Tender Clarification Notice to all Tenderers at that time. All information contained in the Tender Clarification Notice shall thereafter become part of the Tender Documents.

3.4 If the Tenderer finds any discrepancy, error or omission in the Tender Documents or has any query, it must notify Downer in writing prior to the Closing Date for Tenders. Downer's answers shall be issued to all the Tenderers in the form of a Tender Clarification Notice and shall become a part of the Tender Documents.

3.5 Downer may amend the Tender Documents any time prior to the Closing Date for Tenders and issue the amendment to all the Tenderers. Any such amendment shall be issued as a Tender Clarification Notice, shall become part of the Tender Documents and must be complied with by the Tenderers.

3.6 Except where stated to the contrary, all communication in respect of the Tender shall be conducted in writing. Any communication by Downer with Tenderers of any information concerning the Tender shall be considered to be sufficient for the purposes of the Tender.

3.7 The Tenderer has been provided, without in any way affecting or diminishing the acknowledgments given by the Tenderer pursuant to clause B3.1, the Tender Information Documents for information only. Downer makes no representation about the accuracy of their content. If the Tenderer relies on any part of the Tender Information Documents it does so at its own risk.

### **B4 ALTERNATIVE PROPOSALS**

4.1 Subject to clause B4.2, proposals not in accordance with this Request for Tender or a non-conforming Tender will be considered only if they are submitted with a complying Tender and contain a full technical description of the alternative proposal, identify all non-conforming elements of the Tender and a full outline of the advantages to Downer.

4.2 Downer may in its complete discretion accept a non-conforming Tender. This will not create any rights in favour of any Tenderers who have not submitted non-conforming Tenders.

### **B5 LODGEMENT OF TENDERS**

5.1 Not used.

5.2 Not used

5.3 Downer will not reimburse or be liable for any costs incurred by Tenderers in the preparation or lodgement of their Tender offers or in subsequent negotiations with Downer.

5.4 A Tender lodged after the Closing Date for Tenders is a late Tender and may or may not be considered by Downer in its complete discretion.

### **B6 NOT USED**

6.1 Not used

### **B7 INFORMATION**

7.1 Downer is not obliged to provide any information regarding evaluation of Tenders, ranking of Tenderers or any related matters.

### **B8 POST TENDER NEGOTIATIONS**

8.1 Following an initial analysis of all valid Tenders, competitive Tenderers may be short-listed for post-Tender negotiations. At the discretion of Downer, such negotiations may include, but not be limited to:

- (a) pricing and potential cost saving initiatives;

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- (b) the provision and revised pricing of new design documents and/or amendments to the Tender Documents, including but not limited to the design documents and the Agreement;
- (c) technical specifications;
- (d) alternative offers;
- (e) non-conformance issues;
- (f) payment terms;
- (g) contract duration; and
- (h) Tenderer's experience.

8.2 Downer will not be bound to accept the lowest or any Tender, and will in no event be bound to a Tenderer until acceptance of the Tenderer's offer has been made by entering into the Agreement.

### **B9 EVALUATION CRITERIA**

9.1 Downer may assess Tenders on the basis of criteria determined by Downer in its complete discretion. Downer has no obligation to reveal to the Tenderer the criteria against which Tenders may, will or have been evaluated.

Evaluation Criteria	Basis of Assessment
Company Background (previous projects & key personnel)	A general assessment of the tenderer's financial health and operational experience in delivering, including but not limited to: <ul style="list-style-type: none"> <li>• Value of scope of works relative to annual turnover of tenderer;</li> <li>• Financial health of tenderer;</li> <li>• Key health and safety and environment key performance indicators;</li> <li>• Proven experience of tenderer and its personnel in similar projects; and</li> <li>• Past performance assessments/ratings on similar projects.</li> <li>• Key personnel – CVs and Organisational charts.</li> </ul>
Operational and Technical Assessment	Conformity to all technical and design requirements and conformity to all operational requirements, including but not limited to: <ol style="list-style-type: none"> <li>(1) Delivery times offered and ability to meet Program Schedule;</li> <li>(2) Quality of products/services offered;</li> <li>(3) Conformance with TfNSW warranty periods;</li> <li>(4) Any innovation in products or service delivery including meeting and exceed technical requirements;</li> <li>(5) Conformance to any licensing and registration to undertake works (where applicable)</li> </ol>
Sustainability - Environmental, Social and Economic (including Zero Harm and Workplace Relations)	<ol style="list-style-type: none"> <li>(1) Third party certificates with Compliance (EMS, QMS, OHS certificate) including all management plans with accreditate with ISO certified;</li> <li>(2) Policy for APIC, Social Procurement and ISCA, how it will comply with it and reporting requirements</li> </ol>
Financial	A comparison of pricing, ensuring all prices are adjusted so that a like for like comparison can be made.  The comparison must ensure that it is an assessment of whole-of-life costs (including costs or disposal).
Commercial	Conformity to all terms and conditions (including any performance specifications and ASA requirements), Code requirements and insurances

### **B10 INSPECTION OF FACILITIES**

10.1 As part of the evaluation process, Downer may request to undertake inspections of facilities maintained by the Tenderer and/or its offices, infrastructure and support systems. The Tenderer must promptly accommodate such request.

### **B11 ACCEPTANCE OF TENDER**

11.1 Acceptance of a Tender will not occur unless and until the Agreement has been entered into by the Tenderer and Downer.

### **B12 CONFLICTS OF INTEREST AND FAIR DEALING**

12.1 The Tenderer hereby confirms that:

- (a) to the best of the Tenderer's knowledge, no family relationship exists between the

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Tenderer or any employee of the Tenderer involved with the preparation of the Tender, and an employee of Downer involved in the evaluation or administration of the Agreement;

- (b) it has not colluded with other Tenderers or employees or contractors of Downer;
- (c) it has not engaged in any uncompetitive behaviour or other practice which has denied or may deny legitimate business opportunities to other Tenderers;
- (d) it has observed all relevant statutory and other legal requirements;
- (e) it has not sought to influence contract decisions outside the Tender process;
- (f) it has not accepted or provided secret or corrupt commissions; and
- (g) it has not submitted an inflated bid (i.e. cover price) to advantage another Tenderer.

### **B13 COMPLIANCE WITH ANTI-BRIBERY LAWS**

13.1 The Tenderer will at all times comply with:

- (a) all legal requirements relating to anti-bribery, anti-corruption and anti-money laundering (and must not do anything or omit to do anything, to cause Downer to be in breach of any such legal requirements); and
- (b) Downer's Standards of Business Conduct and Anti-Bribery and Corruption Policy as published from time to time.

13.2 The Tenderer warrants that neither it, nor any Relevant Person, has been convicted of any offence, and has not been the subject of any investigation or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence, under any applicable laws, rules and regulation relating to anti-bribery, anti-corruption and anti-money laundering.

13.3 At any time before the expiry of three years from the completion or termination of this RFT, the Tenderer must permit Downer, its nominee, or the principal (in this clause B13 each the Auditor) to conduct an audit and investigation:

- (a) to verify the Tenderer's compliance with this clause B13 (irrespective of whether there has been a breach or suspected breach); and/or
- (b) in relation to a Probity Event (or suspected Probity Event).

13.4 As part of an audit or investigation under this clause B13, the Tenderer must:

- (a) make available to the Auditor (and allow the Auditor to make and retain copies of) any documents, records and other information in the power, possession or control of the Tenderer; and
- (b) meet with the Auditor and make available the Tenderer's personnel to meet with the Auditor and answer reasonable questions in relation to the subject matter of the audit.

13.5 The Tenderer must give Downer notice immediately upon becoming aware of a Probity Event or any breach (or suspected breach) of this clause B13.

### **B14 CONFIDENTIAL INFORMATION**

14.1 The Tenderer must at all times keep confidential and not disclose to any third party the contents of this RFT or any other information provided by or on behalf of Downer in connection with this RFT (Confidential Information) except:

- (a) as required by law; or
- (b) to professional advisors, but strictly on the basis that the Tenderer must ensure that any such third party complies with this clause B14. The Tenderer will be liable to Downer for any breach by such third party of the requirements of this clause B14.

14.2 The Tenderer must use the Confidential Information solely for the purpose of preparing and submitting a Tender and must ensure that it discloses the Confidential Information only to employees and officers with a need to know for that purpose. This clause B14 survives termination or expiry of this RFT.

### **B15 NOT USED**

15.1 Not used.

### **B16 INTERPRETATION**

16.1 In these Tender Conditions the following words and expressions shall have the following meanings:

- (a) Agreement means a contract to be entered into by Downer and a contractor, a draft of which is included in this RFT;
- (b) Not used.
- (c) Not used.

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- (d) Not used.
- (e) Contract Price means the price for which the Tenderer offers to carry out the Works in accordance with this RFT, and otherwise has the same meaning as in the Agreement (including any similar or comparable term that is used in the Agreement, such as 'Price, 'Subcontract Sum' or 'Fee');
- (f) Not used.
- (g) Key Personnel means the personnel nominated by the Tenderer to be part of its project team for delivery of the Works under the Agreement;
- (h) Other Tenderers means parties other than the Tenderer which lodge tenders pursuant to the RFT;
  - (i) Probity event means any event or thing which occurs before or after the date of this RFT which:
    - (i) has a material adverse effect on, or on the perception of, the character, integrity or honesty of a Relevant Person;
    - (ii) relates to a Relevant Person and has or may have a material adverse effect on the public interest, or public confidence, in the Project; or
    - (iii) involves a material failure of a Relevant Person or sub-subcontractor to achieve or maintain:
      - (A) reasonable standards of ethical behaviour;
      - (B) the avoidance of conflicts of interest which will have a material adverse effect on the ability of the Relevant Person or sub-subcontractor (as applicable) to carry out and observe its obligations in connection with the Project; or
      - (C) other standards of conduct that would otherwise be expected of a party involved in a project of the same nature or type as the Project;
- (j) Not used.
- (k) Related Companies means an associated entity (within the meaning of Section 50AAA of the Corporations Act 2001 (Cth));
- (l) Relevant Person means any officer, employee, consultant, representative, subcontractor, sub-subcontractor or agent of the Tenderer;
- (m) Request for Tender or RFT means the request made in the Tender Documents;
- (n) Site means the land and other places to be used or accessed for the Works under the Agreement and otherwise has the same meaning as in the Agreement;
- (o) Standards of Business Conduct and Anti-Bribery and Corruption Policy means any standards published by Downer relating to business conduct, anti-bribery and corruption as updated from time to time;
- (p) Subcontractor means any subcontractor, supplier, consultant or other third party that the Tenderer proposes to engage in connection with the Works or the Agreement;
- (q) Tender means the submission made by the Tenderer pursuant to the Tender Documents;
- (r) Tender Clarification Notice means a document bearing that name issued by Downer in connection with this RFT;
- (s) Tender Documents shall mean:
  - (i) these Tender Conditions and all attachments to them;
  - (ii) Not used.
  - (iii) answers or amendments or notifications issued by Downer under clauses B3.3 to B3.5; and
  - (iv) Not used.
- (t) Not used.
- (u) Tenderer means the person or entity responding to this Request for Tender; and
- (v) the Works means the work, services and/or supplies the subject of this Tender and the Agreement and includes all of the things described in the Agreement as "the Works" or "the Services" or "the Supplies" (as applicable) in the Agreement.