



**Bulloo
Shire**

Part 1
CONDITIONS OF TENDER

Request for Tender (RFT):	Thargomindah Swimming Pool Shade Structure Supply and Installation
Closing Time:	4.00 pm Thursday 2nd May 2024
RFT Number:	T2023-2024-126

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1. Definitions

In these Conditions of Tender, except where the context otherwise requires:

BSC means Bulloo Shire Council.

Closing time means **4.00 pm Thursday 2nd May 2024** Australian Eastern Standard Time.

Conditions of Tender means these Conditions of Tender.

Confidential Information means any technical, commercial or other information, ideas, concepts, know-how, data, drawings, specifications or designs of any kind:

- (a) owned by the Principal and supplied or made available by the Principal to the Tenderer; or
- (b) created by the Tenderer, from the material supplied or made available to the Tenderer by the Principal for the purposes of submitting the Tender.

Contact Person means Mr. Daniel Roy, Grants Officer.

Contract means the document which constitutes or evidences or, as the case may be, all the documents which constitute or evidence the final and concluded agreement between the Principal and the Contractor.

Contract Price means the monetary consideration stated in the Contract for the supply of the goods and services to the Principal whether expressed as a lump sum, price per unit, by weight, volume or otherwise.

Contractor means the Tenderer whose Tender is accepted by the Principal.

General Conditions of Contract means the General Conditions of Contract comprising Part 4 of the Request for Tender.

GST means the goods and services tax under the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* and includes other GST related legislation.

Letter of Acceptance means a letter from the Principal to the Contractor advising the Contractor of the Principal's acceptance of the offer.

Local Government means a local government for a local government area described by regulation under the *Local Government Act 2009*.

Personal Information has the meaning given in the *Information Privacy Act 2009*.

Principal means Bulloo Shire Council.

Principal's Representative means a representative of the Principal that shall be responsible for delivery of the Contract on behalf of the Principal and will liaise with the Contractor for site matters pertaining to the respective Principal's program.

Relevant Person means the Tenderer and each person engaged in the preparation of a Tender on behalf of the Tenderer.

Request for Tender or RFT see item 2 'Structure of Request for Tender'.

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

Schedule of Rates means any schedule included in the Contract which, in respect of any section or item of work to be carried out, shows the rate or respective rates of payment for the execution of that work and which may also include lump sums, provisional sums, progressive drawdowns, other sums, quantities and prices.

Specification means the Specification comprising Part 2 of the Request for Tender, including any amendment or addition to the Specification.

Superintendent means a representative of BSC who will assist the Principal and liaise with the Contractor in the delivery of the Contract.

Tender means the written offer for the supply of the goods and services made by the Tenderer in response to this Request for Tender, comprising the Tender Submission Form and all other required documents as detailed in the Conditions of Tender.

Tenderer means any person lodging a Tender.

Tender Submission Form means the Tender Submission Form comprising Part 3A and Part 3B of the Request for Tender.

2. Structure of Request for Tender

The documents comprising the Request for Tender are, collectively:

- (a) Part 1 - Conditions of Tender (read and keep this part); and
- (b) Part 2 - Specification (read and keep this part); and
- (c) Part 3A - Tender Submission Form which, when completed by the Tenderer, forms part of the Tender of the Tenderer (complete and return this part); and
- (d) Part 3B - Tender Submission Form - Pricing Schedule which, when completed by the Tenderer, forms part of the Tender of the Tenderer (complete and return this part); and
- (e) Part 4 - General Conditions of Contract (read, sign and return this part); and
- (f) Part 5 - Contractor Engagement Pack (WHS) (read and return signed Page 1);

All parts of the Request for Tender must be read and construed together so that all parts are as far as possible consistent. Where the documents are inconsistent, the documents should be read and construed in the order of priority from document (a) to (e) as follows:

- (a) Conditions of Tender;
- (b) Specification, including Appendix;
- (c) Contractor Engagement Pack (WHS);
- (d) General Conditions of Contract; and
- (e) Tender Submission Form Part 3A and Part 3B, including Appendices.

The Request for Tender is not an offer. The Request for Tender is an invitation for persons to submit an offer for the supply of the goods and services particularised in the Specification.

3. Term of Contract

The term of the Contract is for the 2023/2024 - 2024/2025 financial year with the Date for Practical Completion as specified in Part 2 - Specification.

4. Obtaining Information

The Contact Person will provide prospective Tenderers with the Request for Tender documentation.

Tenderers must not direct an enquiry in connection with the Request for Tender documentation, the Request for Tender process or Tender, to the Principal.

Tenderers must direct all enquiries in connection with the Tender and the Request for Tender process, in writing to the Contact Person.

The Principal will not be bound by any advice or information furnished by a Councillor or officer or agent of the Principal with respect to the Request for Tender.

Information provided to the Tenderer by or on behalf of the Principal:

- will be provided for the convenience of the Tenderer only, and, unless expressly incorporated into the Contract, will not form part of the Contract; and
- is not warranted or represented by the Principal as accurate, correct or adequate.

If the Principal makes information available to a Tenderer, the Principal reserves the right to distribute the information to each Tenderer who has obtained a copy of the Request for Tender from the Principal.

If requested by the Principal, the Tenderer must:

- provide further information relating to the Tender; and
- give a presentation at a time and place nominated by the Principal:
 - * to demonstrate the Tenderer's financial substance, technical capabilities and resources; and
 - * to demonstrate its ability to comply with the terms and conditions of the Contract; and
 - * in relation to anything else relative to the Tender; and
- allow the Principal and its agents to inspect any facility or equipment the Tenderer proposes to use in complying with the terms and conditions of the Contract; and
- authorise the Principal and its agents (in writing, if required) to contact any referee nominated by the Tenderer; and
- authorise the Principal (in writing, if required) to obtain information about the Tenderer, particularly information relevant to the Tenderer's ability to discharge the responsibilities of the Contractor under the Contract, from any third party the Principal considers may be able to provide that information.

The Principal may provide information to Tenderers in electronic format, in addition to the hard copy format.

Where there is an inconsistency between the information in the electronic format and the hard copy information, the latter prevails.

5. Responsibilities of Tenderer

Before submitting its Tender, each Tenderer must:

- carefully read and consider the Request for Tender and any other information made available by the Principal with respect to the Request for Tender and the process of tendering for the Contract; and
- read and consider all information relevant to the risks, contingencies and other circumstances relevant to the Request for Tender; and
- inform itself of the nature of the obligations it must discharge under the Contract; and
- inform itself of the labour, plant and equipment and other items necessary, suitable or desirable to enable the Tenderer to discharge its obligations under the Contract; and
- not rely upon information provided by or on behalf of the Principal; and

- independently verify any information provided by or on behalf of the Principal, and
- satisfy itself that the information is adequate and accurate; and
- satisfy itself that the information in its Tender is accurate and complete; and
- satisfy itself that its Tender complies in all respects with the requirements of the Conditions of Tender.

In evaluating Tenders and determining with whom it will enter the Contract, the Principal will rely upon Tenderers having complied with the requirements of this clause.

Failure to comply with any requirement in this clause will not relieve the relevant Tenderer of responsibility to complete the Contract in accordance with its terms and conditions and in particular, the price or rate tendered by the Tenderer.

Submission of a Tender without any qualification or statement regarding interpretation shall be construed as an acknowledgment and acceptance on the part of the Tenderer of the Principal's interpretation.

The Principal will not be responsible for the payment of any expenses or losses incurred by the Tenderer in:

- preparing and lodging its Tender; or
- participating in any post Tender activities.

A Tender will not be considered if the Tenderer or anybody on its behalf offers or gives anything to:

- any Councillor of the Principal; or
- any officer or agent of the Principal,

as an inducement or reward that could influence the actions of the person in relation to the Request for Tender.

6. Tenderer's Conduct

The Tenderer must not approach Councillors or officers or agents of the Principal to discuss the Tender or Contract. A Tender will not be considered if anybody offers or gives anything to a Councillor of the Principal or any officer or agent of the Principal, as an inducement for the purpose of seeking to influence the manner in which the Tender is evaluated or the Contract awarded.

Any approach or known evidence of canvassing, breach of confidentiality or collusion by a Tenderer will be reported to the Chief Executive Officer of the Principal. If a Tenderer is found to have participated in any of these actions the Tenderer may be considered in breach of Contract.

7. Formal Requirements

The Tender must be submitted in writing in the form of the Tender Submission Form and Tender Submission Form - Pricing Schedule. If any additional information is required, the Principal will request it, in writing, from the Tenderer. Any additional information sent with a Tender, which is not requested, may render a Tender non-conforming.

The Tender Submission Form must be fully completed, and include all supporting documents and materials required by both the Conditions of Tender and the Tender Submission Form.

The Tender must contain the Tenderer's:

- full name; and
- Australian Business Number; and
- Address, email address and facsimile number for the service of notices.

If the Tenderer operates as a firm, the Tender must contain:

- the full names and addresses of each member of the firm; and
- the business name under which the firm trades; and
- the firm's address, email address and facsimile number for the service of notices; and
- the firm's Australian Business Number.

If the Tenderer is a corporation, the Tender must contain details of the corporation's:

- name; and
- business name (if applicable); and
- Australian Business Number; and
- registered office; and
- address, email address and facsimile number for the service of notices; and
- the name, telephone number, email address and address (if different from the address for service of notices) of a natural person who is authorised by the corporation to represent it in relation to the Tender.

If the Tenderer is a consortium or a joint venture, the Tender must contain details of:

- the name of each member; and
- the structure of the consortium or joint venture, including the proposed managerial structure; and
- the role to be played by each member in complying with the terms and conditions of the Contract; and
- in the case of a consortium, the member who is to be the Principal Contractor on behalf of the consortium.

The Tender Submission Form must be duly executed in a manner that binds the Tenderer.

The Contract Price in the Tender must be:

- in Australian dollars; and
- unless otherwise specified in the Tender Submission Form, GST exclusive.

The identity of the Tenderer is fundamental to the Principal. For the purposes of a Tender, the Tenderer is the person, persons, corporation or corporations:

- who is named as the Tenderer in the Tender; and
- who has duly executed the Tender in a manner that binds the Tenderer.

8. Conforming and Non-Conforming Tenders

The Principal will not be obliged to consider any Tender that does not comply with the requirements of the Conditions of Tender. The Principal reserves the right to consider any Tender that may be submitted after the Closing Time.

A Tender may be considered as non-conforming if the Tenderer has failed to supply any of the information required by the Conditions of Tender, does not comply with any of the requirements of the Conditions of Tender or has been lodged subject to any condition or qualification.

If a non-conforming Tender (alternate Tender) is submitted, it must be accompanied by a conforming Tender and a clear summary of all points of difference between the non-conforming (alternate) Tender and the conforming Tender.

9. Lodgement of Tender

Tenders must be submitted either by electronic copy or post by no later than **4.00 pm Thursday 2nd May 2024**.

Lodgements by post must be in a sealed envelope addressed to:

Chief Executive Officer
Bulloo Shire Council
PO Box 46
Thargomindah QLD 4492

Tenders must be clearly marked with the number and title of the Tender as shown on the front cover of the Request for Tender.

Tenders may be placed in the container marked "Tender Box" at the Bulloo Shire Council's Administration Centre on Dowling Street, Thargomindah.

Lodgements by email must be emailed to tender@bulloo.qld.gov.au and:

- a) must keep the file size of each document below 15MB (100MB in total for any Tender); and
- b) must ensure, prior to submitting the Tender, that it is free from viruses and has been checked with an up-to-date virus checking program.

Where a Respondent lodges a non-conforming (alternate) Tender:

- a) the conforming and non-conforming (alternate) Tenders must be lodged in separate envelopes or emails; and
- b) the non-conforming Tender must be clearly marked, "ALTERNATE TENDER" (in addition to being marked in conformity with Clause 9).

A hard copy of Tender is not required.

The Principal may extend the Closing Time at its discretion.

The Principal reserves the right to consider a Tender which is not received at the electronic mail address by the Closing Time if, in the opinion of the Principal, no commercial advantage has been gained by the Tender being delivered to the electronic mail address late.

A Tenderer must not alter or add to the Tender Submission Form unless required by the Conditions of Tender.

A Tender is irrevocable for 90 days after the Closing Time.

The period above may be extended by mutual agreement between the Tenderer and the Principal.

Each Tender constitutes an offer by the Tenderer to the Principal to supply the goods and services required under, and otherwise to satisfy the requirements of, the Specification on the terms and conditions of the Contract.

10. Opening of Tenders

Tenders will be opened after the Closing Time. Tenders will not be opened publicly.

11. Tender Evaluation Process

Tenders will be evaluated by reference to the sound contracting principles in section 104 of the *Local Government Act 2009*, namely:

- value for money; and
- open and effective competition; and
- the development of competitive local business and industry; and
- environmental protection; and
- ethical behaviour and fair dealing.

Tenders will also be evaluated using the information provided in the Tender Submission Form.

If a Tender Submission Form for a Tender is not fully completed or does not include all supporting documents and materials required by the Conditions of Tender or the Tender Submission Form, the Tender may be rejected.

In evaluating Tenders, the Principal may:

- require presentations from Tenderers; and
- conduct interviews with Tenderer's staff and subcontractors; and
- contact Tenderer's referees; and
- investigate a Tenderer's structure and management, and that of any relevant subsidiary or related corporation; and
- make its own assessment of the Tenderer's ability to comply with the terms and conditions of the Contract at the tendered price; and
- verify that the Tenderer holds all necessary permits, licences, approvals and certifications necessary to enable it lawfully to comply with the terms and conditions of the Contract.

Tenderers must give the members of the evaluation panel of the Principal any cooperation and assistance reasonably requested of them to facilitate consideration of their Tenders.

Compliance criteria for the Request for Tender are specified in Item 3.1 of the Tender Submission Form. Each Tender will be assessed on a Yes/No basis as to whether each of the compliance criterion is satisfied by the Tenderer or not. If a Tender is assessed as "No" in respect of a criterion, the Tender may be rejected.

Qualitative criteria for the Request for Tender are specified in Item 3.2 of the Tender Submission Form. The qualitative criteria may be weighted to indicate the relative degree of importance that the Principal places on the technical aspects of the supply of the goods and services. Each Tenderer must address each of the qualitative criteria specified in Item 3.2 of the Tender Submission Form. If a Tenderer fails to address any of the qualitative criteria in Item 3.2 of the Tender Submission Form, its Tender may be rejected.

Following the assessment, the Principal may elect to invite a party or number of parties to provide a presentation to support their Tenders or complete a best and final offer.

12. Clarifications and Variations

The Principal may issue to Tenderers before the Closing Time:

- additional information; and
- information clarifying or correcting information previously provided,

to assist them in preparing their Tenders.

If the Principal issues information to Tenderers under this clause, each Tenderer must take the information into account in the preparation of its Tender.

After the Closing Time, the Principal may (without limiting its options):

- request clarification or further information from any Tenderer; and
- invite all Tenderers to change their Tenders in response to an alteration to the Specification or any of the terms and conditions of the Contract; and
- negotiate with one or more Tenderers upon any aspect of their Tenders.

13. Commissions and Incentives

A Tender will not be considered if anybody offers or gives anything to a Councillor of the Principal, or any officer or agent of the Principal, as an inducement for the purpose of seeking to influence the manner in which the Tender is evaluated or the Contract awarded.

14. Confidentiality

The Tenderer:

- acknowledges that the confidential information is sensitive and valuable, and will remain at all times the property of the Principal; and
- must not use the confidential information for any purpose other than preparing its Tender; and
- must not copy any material comprising or containing confidential information, other than where (and then only to the extent that) copying is necessary to enable it to prepare its Tender; and
- must allow access to the confidential information by relevant persons only to the extent necessary to enable the Tender to be prepared; and
- must obtain the Principal's written consent before disclosing confidential information to a person other than a relevant person.

The consent of the Principal to disclosure of the confidential information by the Tenderer may be given or withheld on such terms and conditions as the Principal considers appropriate.

The Tenderer's obligation under this clause continues after closure of Tenders and award of the Contract.

The Principal reserves the right to retrieve from a Relevant Person any confidential information held by that person, subject to the Principal having given written notice to the Tenderer in writing that the Relevant Person is to be denied access to the confidential information.

Failure or delay by the Principal in enforcing strict compliance with this clause or pursuing a remedy under this clause will not constitute a waiver or implied variation of the entitlement or remedy.

This clause will not apply to an item of confidential information where the Tenderer can establish that:

- the item has been transferred to the public domain through no fault of the Tenderer; or
- the item was already in the Tenderer's possession when it was supplied or made available by the Principal, and not acquired directly or indirectly from the Principal; or
- it has received from the Principal written notification that the Principal no longer requires the Tenderer to keep the item confidential.

15. Acceptance of Tender

The Principal will not be bound to accept the lowest or any tender.

The Principal may accept a Tender from a Tenderer by giving written notice in the form of a Letter of Acceptance to the Tenderer who submitted the Tender to the Principal.

The Contract will not come into existence until the Principal has given written notice in the form of a Letter of Acceptance to the Tenderer.

When the Contract comes into existence the Tenderer becomes the Contractor for the purposes of the General Conditions of Contract.

The Principal reserves the right to accept a Tender in part or in whole.

16. Right to Information and Disclosure

The RTI Act provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including Local Governments).

The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or, on balance, disclosure is contrary to the public interest.

Information provided by the Tenderer is potentially subject to disclosure to third parties pursuant to the RTI Act.

If disclosure under the RTI Act, or general disclosure of information provided by the Tenderer, would be of substantial concern to the Tenderer, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, including Personal Information, this should be indicated by the Tenderer in its Tender. The Principal cannot guarantee that any information provided by the Tenderer will be protected from disclosure under the RTI Act.

The Tenderer must familiarise itself with the relevant provisions of the RTI Act dealing with the requirements for disclosure of information by agencies, and the grounds on which access to information may be refused.

The Principal accepts no responsibility for the accuracy or adequacy of any information it provides to Tenderers concerning the content or effect of the RTI Act.

The Principal reserves the right to disclose, by publication by means of media of its choosing upon award of any Contract details of the name and address of the Contractor, a description of the relevant goods, services or goods and services, the commencement date of the Contract and the Contract Price or value.

17. Ownership of Tenders

Each Tender Submission Form (including all supporting documentation and materials submitted by a Tenderer as part of, or in support of, a Tender) becomes the property of the Principal on submission and will not be returned to the Tenderer.

However, the Tenderer shall retain copyright and other intellectual property rights in respect of the Tender except to the extent specified in the Contract.

The Principal may reproduce the Tender for the purposes of evaluation.

18. Information Privacy

The Principal is bound by the provisions of the *Information Privacy Act 2009*.

By submitting a Tender, the Tenderer warrants that it has obtained the consent of each individual whose Personal Information is included in the Tender for:

- (a) the inclusion of their Personal Information in the Tender; and
- (b) the use of the Personal Information by the Principal for the purpose of evaluating and awarding the Tender; and
- (c) the disclosure of the Personal Information to other parties (including professional advisors) as may be involved in assisting the Principal with the evaluation of the Tender.

The Tenderer must indemnify the Principal against any claim, damage or loss (including legal costs and expenses) that the Principal may incur as a consequence of a breach by the Tenderer of the warranty above.

Any Personal Information exchanged between the Tenderer and the Principal must be dealt with in accordance with the *Information Privacy Act 2009*.

The Tenderer must immediately notify the Principal upon becoming aware of any breach of this clause.

19. General Conditions of Contract

The Tenderer consents to abide by the General Conditions of Contract (Part 4 of this Request for Tender) in the provision of these goods and services.