

Code of Public Tendering Hobart City Council

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Code of Public Tendering

Hobart City Council

1. Scope of Code

- (a) This Code is intended to apply to all tenders advertised publicly by the Hobart City Council. The Principal may apply it to other tenders at its absolute discretion.
- (b) The Principal may decide that this Code should not apply to a particular tender. If so, the conditions of tendering for that tender must contain a clear statement to that effect.
- (c) This Clause 1(c) applies unless the operation of this Code is excluded under Clause 1(b). In consideration of the Principal agreeing to consider Conforming Tenders in accordance with Clause 14(a), a Tenderer accepts the terms of this Code by submitting a tender. Upon a Tenderer submitting a tender, this Code becomes binding as a contract between the Principal and that Tenderer.
- (d) The Successful Tenderer must apply this Code as if the Successful Tenderer were the Principal in seeking tenders from prospective subcontractors except to the extent that any provision of the Code cannot be so applied.
- (e) If the terms of this Code and any conditions of tendering contained in a Tender Package conflict the conditions of tendering shall take precedence.

2. Definitions

“Completion” means the time when the Principal has considered the Tenders, has concluded any negotiations with Tenderers and has let the Contract or otherwise finished dealing with the Tenders.

“Conforming Tender” means a tender which satisfies all of the requirements for tenders set out in the Tender Package.

“Contract” means the contract for the carrying out of the Work to be entered into between the Principal and the Successful Tenderer.

“Criteria” means the criteria set out in clause 14(d) to be taken into account in considering Tenders.

“Non-Conforming Tender” means a tender which does not satisfy all of the requirements for tenders set out in the Tender Package including (but not limited to) requirements for information about the Tenderer and details of the proposed works.

“Preferred Tenderer” means the Tenderer who, in the opinion of the Principal, best satisfies the Criteria.

“Principal” means Hobart City Council.

“Successful Tenderer” means the Tenderer whose tender the Principal accepts or with whom, after negotiations, the Principal enters into a contract for the performance of the Work.

“Tender Closing” means the time and date specified in the Tender Package by which tenders must be submitted.

“Tender Opening” means the opening of Tenders under clause 12.

“Tender Package” means the tender package which the Principal provides to prospective Tenderers under clause 7.

“Tenderer” means any party submitting a tender to the Principal in respect of the Work.

“Tenders” means all Tenders submitted to the Principal in respect of the Work.

“Work” means the work for the performance of which the Principal has invited tenders including, where the context so requires, the work described in a Non-Conforming Tender submitted in accordance with clause 14(b) and includes the provision of goods or services.

3. General Principles

All parties involved in tenders to which this Code applies must:

- (a) conduct tendering honestly and fairly to all parties;
- (b) refrain from inviting or submitting tenders without a firm intention to proceed;
- (c) apply the same conditions of tendering for each Tenderer and avoid any practice which provides one party an improper advantage over another; and
- (d) refrain from all improper practices including collusive tendering.

4. Conflict of Interest

Any party to a tender who has a conflict of interest must declare the relevant interests to any other party to the tender who may be adversely affected by the conflict immediately upon becoming aware of the conflict.

5. Collusive Tendering

- (a) Tenderers must not engage in collusive tendering.
- (b) Collusive tendering includes but is not limited to the following practices:
 - (i) agreements between Tenderers as to who should be the successful Tenderer;

- (ii) any meeting of Tenderers prior to the submission of their tenders that may disadvantage the Principal;
- (iii) exchange of information between Tenderers about their tenders prior to awarding of a contract;
- (iv) agreement between Tenderers for payment of money or securing of reward or benefit for unsuccessful Tenderers by the successful Tenderer;
- (v) agreement or collaboration between Tenderers to fix prices or conditions of contract;
- (vi) submission of a cover tender or any assistance to another person to submit such a cover tender that is intended to advantage another Tenderer or disadvantage the Principal;
- (vii) any unlawful or illegitimate agreement between Tenderers before submission of tenders such as fixing a special rate of payment to a third party where the payment of such fees is conditional on the Tenderer being awarded a contract; and
- (viii) any unlawful or illegitimate agreement providing for payment to any third party of money, incentives or other concessions contingent on the success of a tender which do not relate to the provision of bona fide services relevant to that tender.

6. Invitations to Tender

- (a) An invitation to tender must set out:
 - (i) a description of the Work;
 - (ii) the time, date and place of Tender Closing;
 - (iii) details of the place from which the Tender Package may be collected; and
 - (iv) the amount of any deposit which the Tenderers are required to pay upon collecting the Tender Package and the terms upon which it will be refunded.
- (b) Tender Closing should be not less than two weeks after the date on which the invitation to tender is first published, unless special circumstances require otherwise.
- (c) The time for Tender Closing must not be:
 - (i) on a Monday or a day following a public holiday;
 - (ii) before 3.00 pm; or

- (iii) between 24 December and 2 January inclusive,
unless special circumstances require otherwise.

7. Tender Package

- (a) The Principal must make available to prospective Tenderers a Tender Package which:
 - (i) states the time and date by which tenders must be submitted, the place at which tenders must be submitted and any other requirements concerning submission of tenders;
 - (ii) sets out details of any deposit to be paid by Tenderers upon lodgement of tenders including the amount of the deposit and the circumstances under which it will be refunded;
 - (iii) clearly defines the intended contractual obligations of the parties;
 - (iv) provides details of the Work;
 - (v) designates information required from Tenderers;
 - (vi) nominates a person to whom Tenderers may direct enquiries;
 - (vii) encourages Tenderers to incorporate maximum innovation, while satisfying commercial and technical objectives, by allowing the submission of options in addition to a Conforming Tender; and
 - (viii) contains sufficient detail to avoid undue design and documentation work prior to Completion.
- (b) The Tender Package must include the following documents:
 - (i) conditions of tendering;
 - (ii) specification;
 - (iii) tender form;
 - (iv) conditions of contract or a reference to the form of conditions of contract to be used;
 - (v) contract annexures (if applicable); and
 - (vi) drawings, schedules and any other documents necessary to satisfy the requirements of paragraph 7(a).
- (c) A copy of this Code must be made available to Tenderers for collection with the Tender Package.

8. Form of Contract

- (a) The Principal must use published standard conditions of contract appropriate to the Work unless special circumstances require otherwise.
- (b) The Principal may amend or use special conditions with standard conditions of contract. If the Principal does so, the Principal must clearly identify the amendments or special conditions.

9. Tender Enquiries

- (a) The Principal must nominate a person to deal with Tenderers' enquiries.
- (b) Tenderers may seek further information only from the person nominated by the Principal.
- (c) If a Tenderer makes an enquiry the Principal must record the time and date of the enquiry, the name of the enquirer and the substance of the discussion.
- (d) The Principal may conduct a tender briefing meeting.
- (e) The Principal must inform all Tenderers of the time and place at which the tender briefing meeting is to be held and invite them to attend.
- (f) The Principal must keep minutes of any tender briefing meeting.
- (g) If the Principal provides to any Tenderer information which is not contained in the Tender Package, the Principal must give that information to all Tenderers.

10. Submission of Tenders

- (a) Tenders must be delivered to the place named in the Tender Package by post or by hand to arrive not later than the time specified in the Tender Package.
- (b) Tenders must not be submitted to the Principal by facsimile.
- (c) Each tender must be enclosed in a sealed envelope clearly marked "Tender" with the Principal's tender reference number and description of the tender.
- (d) The Principal must endorse on the envelope containing any tender submitted by mail the time and date of receipt.
- (e) The Principal may, in its absolute discretion, accept a tender received late if it was posted at such a time (postmarked not less than 2 clear days before Tender Closing) that it should have been received by the Principal by Tender Closing. Otherwise, the Principal must reject any tender which is not submitted in accordance with this clause 10.
- (f) A person must not submit a tender unless that person has the capacity and capability to carry out the Work.

11. Amendment of Tender Documents

- (a) The Principal may amend the Tender Package if it discovers a significant error or discrepancy in it.
- (b) If the Principal amends the Tender Package it must:
 - (i) give an addendum to the Tender Package to all Tenderers;
 - (ii) give Tenderers sufficient time to consider the addendum; and
 - (iii) permit any Tenderer who has already submitted a tender to submit an addendum, complying with the requirements of clause 10 and clearly marked “Tender Addendum”.
- (c) Each Tenderer must, not later than Tender Closing, acknowledge in writing receipt of the addendum given by the Principal.

12. Tender Opening

- (a) Tender Opening must not be held in public.
- (b) Tenders must be opened in the presence of:
 - (i) two members of the Principal’s staff other than the person referred to in Clause 12(b)(ii); and
 - (ii) the person who will be responsible for administration of the Contract on behalf of the Principal or a representative of that person.
- (c) The employee under Clause 12(b)(i) must initial each sheet of the Tenders and each employee present must sign a summary showing the Tenderers’ names and the service tendered for.
- (d) The Principal must keep a copy of the summary until after Completion.

13. Withdrawal of Tenders

A Tenderer may not withdraw its tender before Completion without the Principal’s consent otherwise than as permitted in the conditions of tendering included in the Tender Package. The Principal may give or withhold its consent in its absolute discretion.

14. Consideration of Tenders

- (a) Subject to this Code the Principal must consider all Conforming Tenders.
- (b) The Principal must not consider a Non-Conforming Tender unless it is submitted as an alternative to and accompanying a Conforming Tender.

- (c) The Principal may consider a Non-Conforming Tender submitted in accordance with Clause 14(b), may negotiate with the Tenderer who submitted it and may accept the Non-Conforming Tender or any variation of it negotiated with the Tenderer.
- (d) The Principal must take into account the following criteria in considering Tenders:
- (i) the resources of the Tenderer including technical, managerial, physical and financial resources;
 - (ii) proposed methodology;
 - (iii) Tenderer's understanding of the task;
 - (iv) price;
 - (v) Tenderer's past experience and performance history including:
 - time management;
 - standard of work or product;
 - management and quality of site personnel;
 - co-ordination of service providers, consultants and suppliers;
 - after delivery service;
 - conformance with the specification;
 - occupational health and safety; and
 - employee relations;
 - (vi) experience of key personnel;
 - (vii) time for completion;
 - (viii) quality assurance;
 - (ix) compliance with this Code; and
 - (x) any other criteria specified in the Tender Package.
- (e) The Principal must determine the weighting to be given to the Criteria before Tender Opening, and the weightings are to be determined at the Principal's absolute discretion.
- (f) The weighting to be given to each of the Criteria may vary from project to project.

- (g) The Principal may advise Tenderers of the weightings but shall not be obliged to do so.
- (h) The Principal may request additional information from a Tenderer to assist it in evaluating that Tenderer's tender but must not request such information in order to turn a Non-Conforming Tender into a Conforming Tender.

15. Negotiation, Rejection and Acceptance of Tenders

- (a) The Principal is not obliged to accept any tender.
- (b) The Principal is not obliged to accept the lowest Conforming Tender.
- (c) The Principal may accept any Conforming Tender or any Non-Conforming Tender submitted in accordance with Clause 14(b).
- (d) The Principal may reject all Tenders.
- (e) If the Principal rejects all Tenders the Principal must advise each Tenderer accordingly.
- (f) If the Principal rejects all Tenders, the Principal may invite further tenders.
- (g) If the Principal does not accept any tender the Principal may negotiate with the Preferred Tenderer and, after exhausting negotiations with the Preferred Tenderer, with other Tenderers in order of preference from most to least preferred.
- (h) In the course of negotiation with a Tenderer, the Principal must not disclose the details of a tender submitted by any other Tenderer.
- (i) If the Principal decides to accept a tender or a subsequent offer, the Principal must accept that tender or subsequent offer by letter to the Successful Tenderer stating that the tender or subsequent offer has been accepted and setting out the terms of that acceptance. The Principal must then send the Successful Tenderer a formal contract for execution.
- (j) After the Principal has accepted a tender or subsequent offer, the Principal and the Successful Tenderer must execute a formal contract document in the form specified in the Tender Package (with any necessary amendments) within 14 days from the date when the Successful Tenderer received the letter under Clause 15(i).
- (k) Upon sending a letter to a Successful Tenderer under Clause 15(i), the Principal must advise all other Tenderers that their tenders have been unsuccessful and, unless it is inappropriate to do so, of the price of the accepted tender or offer.
- (l) The Principal must display on the official notice board at the Hobart Town Hall the name of the Successful Tenderer and, unless it is inappropriate to do so, the price of the accepted tender or offer.

- (m) The Successful Tenderer shall not be entitled to receive payment for carrying out the Work until it has executed a formal contract document.

16. Confidentiality

- (a) The Principal and Tenderers must keep information which they receive from each other in the course of the tender process confidential except where they are expressly permitted under this Code or obliged by law to release that information.
- (b) If any Tenderer provides to the Principal documents marked “confidential”, the Principal must return such documents to the Tenderer who provided them as soon as practicable after Completion.

17. Breach of the Code

- (a) The Principal must take all reasonable steps to comply with this Code and ensure that all other parties comply with it. However, the Principal shall not be liable in any way to a Tenderer or any other person for any breach of this Code.
- (b) If an employee of the Principal or a body controlled by the Principal breaches this Code, the Principal may take disciplinary action if, in its absolute discretion, it considers it desirable to do so.
- (c) If a Tenderer commits a breach of this Code, the Principal may, in its absolute discretion, take action against the Tenderer including but not limited to:
 - (i) a warning;
 - (ii) reduction in opportunities to tender for work for the Principal;
 - (iii) refusal by the Principal to consider any tender submitted by the Tenderer to the Principal;
 - (iv) publicising the breach and the identity of the Tenderer; and
 - (v) reporting the breach to a statutory, professional or other body.



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