

**Brisbane City Council**

# **REQUEST FOR PROPOSAL - CONDITIONS**

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*Dedicated to a better Brisbane*

**RFP CONDITIONS**

By submitting a proposal, you agree to the following conditions:

**1. Definitions**

In this Request for Proposal:

- 1.1 **“alternative offer”** means a proposal which includes an element(s) which Council considers to be substantially different to the requirements stated in Council’s specification but provides a comparable outcome.
- 1.2 **“Corporate Procurement Arrangement”** or **“CPA”** means an arrangement (such as a preferred supplier arrangement with one supplier or a panel arrangement with multiple suppliers) for a defined period under which Council may purchase the good/services/works that the arrangement was established for.
- 1.3 **“Council”** means the Brisbane City Council as represented by Council’s contact officer.
- 1.4 **“joint offer”** means a proposal submitted by two or more legal entities.
- 1.5 **“part offer”** means a proposal to provide only part of the goods/services required by the RFP or, where the RFP has separate portions/packages/categories, only part of a portion/packages/category.
- 1.6 **“proposal”** means a submission offering to provide the good/services/works made in accordance with this RFP, as clarified and/or negotiated.
- 1.7 **“Request for Proposal”** or **“RFP”** means this RFP Particulars and Conditions document and the RFP Deliverables documents, with all attachments/referenced documents.
- 1.8 **“tenderer”** means you or another entity that lodges a proposal.
- 1.9 **“you”** means the entity (company, incorporated association or sole trader) that lodges a proposal.

**2. Your enquiries, reliance on information and your proposal**

- 2.1 If you wish to seek clarification regarding this RFP, you must do so prior to the submission deadline and only by email to Council’s contact officer.
- 2.2 You cannot assert any warranty/representation made by Council except where it is contained in this RFP or provided in writing by Council’s contact officer during this RFP process. You must make your own reasonable enquiries to fully inform yourself of all the risks, contingencies and other circumstances which may impact on you or your proposal.
- 2.3 Where Council has provided historical quantity data (e.g. showing the quantities of good/services historically purchased by Council), this is not to be construed as any form of inducement or guarantee that Council will procure a minimum level (or any) of the goods/services/works from you.
- 2.4 Your proposal must comply with the requirements stated in the RFP Particulars (refer to clause 9) and must comply with all mandatory criteria (if any). Your proposal must remain valid for acceptance by Council for the validity period specified in item 3.5 of the RFP Particulars or such longer period as agreed with Council in writing.
- 2.5 If you provide an alternative offer, you must articulate the benefits of the alternative offer proposed (e.g. innovations, time or cost savings etc) and also consider providing a price to achieve the outcome as specified by Council to enable comparison (note clause 5.4(f)).
- 2.6 You must lodge your proposal in the manner and form required by Council and before the submission deadline, at the specified place for lodgement. Council is not obliged to consider any proposal lodged after the submission deadline, or lodged at any other place. Council may extend the submission deadline at any time.
- 2.7 Once your proposal has been lodged, you can only amend your proposal if Council consents in writing, and you can only assign your proposal to another person/entity if Council consents in writing.
- 2.8 Council will be relying on all of the information contained, and all of the representations made, in your proposal and any subsequent clarifications of your proposal for the purposes of evaluating your proposal.

**3. Communication in relation to this RFP process and unsolicited price reductions**

Any communications from you about this RFP must be made by email to Council’s contact officer. You must not make any unsolicited price reductions/changes to your proposal during the evaluation process.

**4. Clarification of proposals and enquiries of referees/others**

You must provide any additional information as and when requested by Council. Council may make enquiries of any person (including any company or other organisation) without advising you to verify any information provided by you or ascertain the suitability of you or your proposal.

**5. Evaluation, shortlisting, negotiation and selection**

- 5.1 Council may evaluate proposals on any criteria that Council considers appropriate, including but not limited to those criteria listed in the RFP Particulars and any risks or opportunities that Council perceives to be associated with you, your proposal or any other tenderer(s) or proposal(s).



- 5.2 Council's typical evaluation methodology places equal weight on price and non-price factors (note that Council may or may not be using Council's typical evaluation methodology). Where any percentage weightings are shown, these are a percentage of the comparative criteria.
- 5.3 At any time during the evaluation process and on any number of occasions, Council may:
- (a) shortlist one or more tenderers and in so doing exclude the remaining tenderers from further consideration;
  - (b) cancel any shortlist and return to considering a wider group of tenderers; and/or
  - (c) negotiate with one or more tenderers, or all tenderers. Negotiations may include changes/modifications to any of the following:
    - (i) RFP;
    - (ii) Council's requirements; and/or
    - (iii) proposal(s).
- 5.4 Council may shortlist on any basis in pursuit of the most advantageous outcome for Council. In addition, Council may exclude your proposal from further evaluation or any shortlist where any of the following apply:
- (a) Your proposal is considered by Council to not conform with the requirements of the RFP;
  - (b) Your score against a criterion (regardless of any weighting) is so low that Council considers the proposal to be high risk or not advantageous for Council;
  - (c) Your price exceeds Council's available budget for the goods/service/works;
  - (d) Regarding your statement of departures (refer to the RFP Deliverables clause 7):
    - (i) Your proposal includes departures from the specification, insurance requirements or proposed contract that Council considers to be unacceptable or not advantageous for Council;
    - (ii) After lodging your proposal, you raise any departure(s) from the outcome/specifications or proposed contract that was not raised in your statement of departures; and/or
    - (iii) The RFP is requesting offers under a CPA and you raise any departure(s) from the draft contract which was previously agreed during the establishment of the CPA;
  - (e) You or your proposal is considered to be high risk or not advantageous for Council, regardless of the criteria stated in the RFP (e.g. Council considers that your financial position is not sufficient for the proposed contract);
  - (f) You submit a joint offer and Council indicates during the evaluation that it is seeking a single entity to contract with and you do not revise your proposal to propose a single entity as the tenderer; or
  - (g) Your proposal is an alternative offer and Council does not wish to pursue that alternative offer.
- 5.5 If Council decides to award a contract(s), Council will select the proposal(s) which, in Council's view, represents the most advantageous outcome for Council. Where there are separate portions / packages / categories, Council may award these to one or more tenderers.

## 6. Contract formation

- 6.1 Council may ask you to sign the proposed contract (using electronic or wet ink signatures) in order to formalise your proposal. If you are asked to sign, this is not an acceptance of your proposal by Council and a binding contract will not be formed unless the contract is signed by you, countersigned by Council and a copy of the contract is provided to you. Council may ask more than one tenderer to formalise its proposal.
- 6.2 If Council chooses to proceed to contract with you, the entirety of the contract terms will be set out in the contract document(s) and will supersede ALL negotiations and representations made during the RFP process.

## 7. Costs to be borne by you

Your participation in the RFP process is at your sole risk and cost. Council will not reimburse any costs associated with RFP participation. You must bear all of the costs you incur by participating in this RFP, irrespective of whether your proposal is successful, unsuccessful or excluded for any reason or the RFP is amended, suspended or terminated.

## 8. Your conduct

You must not:

- 8.1 offer any bribe, gratuity, discount or enticement to any Councillor or Council employee;
- 8.2 collude with any tenderer or prospective tenderer (during the preparation or evaluation of your proposal); and
- 8.3 communicate with the media about any aspect of this RFP or discuss the RFP or your proposal or Council's evaluation with any Councillor or employee of Council, with the exception of Council's contact officer and any officer(s) nominated by Council's contact officer.

## 9. Non-conforming proposals

If a proposal does not conform with the requirements of this RFP, Council may either consider the proposal



despite the non-conformance or exclude the proposal from further consideration.

Requirements of the RFP includes those stated in the RFP Particulars and Conditions, RFP Deliverables and elements of the outcome/specification which Council considers to be key/integral (regardless of whether these have been identified as key or integral).

### **10. Variation, suspension or termination of RFP**

Council may vary, suspend or terminate the RFP process at any time, before or after the submission deadline. Council is not obliged but may provide reasons for the variation, suspension or termination.

### **11. No obligation to enter into a contract and Council's discretion**

11.1 By issuing this RFP, Council is under no obligation to proceed with the procurement. The RFP Conditions articulate Council's requirements, acceptance of which does not form a binding contract for the goods/services/works.

11.2 Council is not bound to:

- (a) consider or evaluate any proposal;
- (b) accept the lowest price proposal or any proposal;
- (c) give explanations or reasons for accepting or rejecting any proposal or any decision made with respect to any proposal; or
- (d) meet with any tenderer.

11.3 Council reserves the right to:

- (a) award a contract to provide goods/services/works to any tenderer;
- (b) reject all proposals with or without notice or reasons;
- (c) accept a part offer; and
- (d) if no proposal is accepted, terminate the RFP process and proceed in such manner as Council considers appropriate.

11.4 Any action, decision, choice, election or finding made by Council during this RFP process, will be made by Council in its sole and absolute discretion.

### **12. Confidentiality and publishing the outcome**

12.1 You must keep confidential and not:

- (a) disclose to any person; or
- (b) copy, use or otherwise deal with for any purpose, any information regarding the RFP process, the goods/services/works, the proposed contract or Council (including its business and activities) except to the extent that:
- (c) you are authorised in writing by Council; or
- (d) the information is necessarily disclosed to and used by others (who are also bound to keep the information confidential) for the purposes of enabling you to prepare your proposal.

12.2 Council may publish the outcome of the RFP process, including the comparative price of each tenderer. Council will not publish any details of your pricing or proposal which Council considers to be commercially sensitive, except as required by law.

### **13. Procurement review**

If you think you have been treated unfairly by Council, you may raise your concern by email to [eTenderingTeam@brisbane.qld.gov.au](mailto:eTenderingTeam@brisbane.qld.gov.au) titled 'request for procurement review'.

### **14. Governing Law**

The laws in force in Queensland from time to time apply to the RFP process.