

# REQUEST FOR TENDER

## PART A – INTRODUCTION AND CONDITIONS OF TENDERING

### Northern Land Council

21 November 2023

|                   |  |
|-------------------|--|
| <b>RFT NUMBER</b> | NLC-23/24 - 002  |
| <b>RFT TITLE</b>  | KATHERINE - NLC KATHERINE OFFICE PRECINCT - CONSTRUCT  |
| <b>CLOSE DATE</b> | 2.00 PM AUSTRALIAN CENTRAL STANDARD TIME<br>FRIDAY, 22 DECEMBER 2023<br>(LATE TENDERS MAY NOT BE ACCEPTED) |

### HOW TO RESPOND TO THIS REQUEST FOR TENDER

Complete the Tender Response Schedules provided separately. Submit in electronic copy per the below details. **Note: no other form of delivery is acceptable**

The Tenderer is required to submit the following:

- Electronically via TenderLink at: <https://portal.tenderlink.com/nlc>  
follow the instructions to register to NLC's Portal..

## TABLE OF CONTENTS

|          |  |          |
|----------|--|----------|
| <b>1</b> | <b>INTRODUCTION.....</b>                           | <b>4</b> |
| 1.1      | Overview .....                                     | 4        |
| <b>2</b> | <b>CONDITIONS OF TENDERING .....</b>               | <b>5</b> |
| 2.1      | Interpretation of terms .....                      | 5        |
| 2.2      | Structure of this Request for Tender.....          | 5        |
| 2.3      | Preparing a Tender Response .....                  | 5        |
| 2.3.1    | General Requirements.....                          | 5        |
| 2.3.2    | Tenderers to Inform Themselves .....               | 6        |
| 2.3.3    | Tender Costs.....                                  | 6        |
| 2.3.4    | Enquiries and Principal’s Contact Person .....     | 6        |
| 2.3.5    | Probity Advisor .....                              | 6        |
| 2.3.6    | Addendum .....                                     | 7        |
| 2.3.7    | Best Offer .....                                   | 7        |
| 2.4      | Tender Response Validity .....                     | 7        |
| 2.5      | Site Inspection.....                               | 7        |
| 2.6      | Industry Briefing .....                            | 7        |
| 2.7      | Industry Accreditation.....                        | 7        |
| 2.8      | Alternative Tenders .....                          | 8        |
| 2.9      | Part Offer and Part Acceptance.....                | 8        |
| 2.10     | Pricing.....                                       | 8        |
| 2.10.1   | General Requirements.....                          | 8        |
| 2.10.2   | Estimated Quantities .....                         | 9        |
| 2.10.3   | Treatment of Low or Aberrant Prices .....          | 9        |
| 2.11     | Impartiality of Requirements.....                  | 9        |
| 2.12     | Conflict of Interest .....                         | 9        |
| 2.13     | Project Control .....                              | 10       |
| 2.14     | Work Health and Safety Accreditation Scheme .....  | 10       |
| 2.15     | Local Content.....                                 | 10       |
| 2.15.1   | Apprentices and Trainees.....                      | 10       |
| 2.15.2   | Indigenous requirements for Regional Councils..... | 11       |
| 2.15.3   | Indigenous Development Plan .....                  | 11       |
| 2.16     | Signing Documents .....                            | 11       |
| 2.17     | Lodgement of Tender Response .....                 | 12       |
| 2.17.1   | Lodgement .....                                    | 12       |
| 2.17.2   | Documents to be Lodged.....                        | 12       |



|        |   |    |
|--------|---|----|
| 2.17.3 | Closing Time and Date .....                   | 12 |
| 2.17.4 | Late Tenders .....                            | 12 |
| 2.18   | Admissibility .....                           | 13 |
| 2.18.1 | General .....                                 | 13 |
| 2.18.2 | Bankruptcy/Insolvency.....                    | 13 |
| 2.18.3 | Improper Conduct / Corrupt Conduct .....      | 13 |
| 2.19   | Ownership of Documents .....                  | 13 |
| 2.20   | Changes to the Conditions .....               | 13 |
| 2.20.1 | Conditions of Tendering.....                  | 13 |
| 2.20.2 | Conditions of Contract .....                  | 13 |
| 2.21   | Tender Assessment Criteria .....              | 14 |
| 2.21.1 | Disclosure of Weightings .....                | 15 |
| 2.22   | Conduct of the Assessment.....                | 15 |
| 2.22.1 | General .....                                 | 15 |
| 2.22.2 | Clarification and Additional Information..... | 15 |
| 2.22.3 | Security, probity and financial checks .....  | 16 |
| 2.22.4 | Tender Response Shortlisting Process .....    | 16 |
| 2.23   | Negotiations .....                            | 17 |
| 2.24   | Notification of Acceptance .....              | 17 |
| 2.25   | Unsuccessful Tender Responses .....           | 17 |
| 2.26   | NLC's Discretionary Rights.....               | 17 |
| 2.27   | Publicity.....                                | 18 |
| 2.28   | influence.....                                | 18 |

## INTRODUCTION

---

# 1 INTRODUCTION

## 1.1 OVERVIEW

The Northern Land Council (NLC) intends to procure the construction of a new purpose built office facility at Lot 3472 Chardon Street, Katherine East, to establish a regional service hub in the Katherine Region.

The NLC is a representative body with statutory authority under the Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA). It also has responsibilities under the Native Title Act 1993 (NT Act) and the Pastoral Land Act 1992. It is a not-for-profit Corporate Commonwealth entity.

The purpose of the project is to build a facility that will help strengthen NLC's presence in the region; improving services to constituents, being responsive to stakeholder needs and meet statutory obligations. A Katherine Service Hub also supports improving services to all Regional Operations in the VRD, Borroloola Barkly and Ngukurr Regions.

The scope of works to be delivered under the contract includes (without limitation) the construction of;

- Three contemporary single storey multi-function buildings to operate as
  - An administration building;
  - An amenities and conference building
  - A ranger office / staff kitchen building;
- Landscaping and external areas;
- One warehouse and associated areas;
- External hardstands and carparking;
- Internal access roads and loading area;
- Fencing and associated services;
- Building and external facilities services and infrastructure.

## CONDITIONS OF TENDERING

## 2 CONDITIONS OF TENDERING

### 2.1 INTERPRETATION OF TERMS

Unless the contrary intention is indicated, these Conditions of Tendering are to be interpreted in the same manner and words have the same meaning as in the Contract.

If a date stipulated for doing an act in relation to the RFT is not a business day (being any day which is not a Saturday, Sunday or a public holiday in the Northern Territory, as specified in Schedule 2 of the *Public Holidays Act (NT)*), the act must be done on the next business day.

In these Conditions of Tendering the following definitions apply:

**‘Addendum’** means any document expressly stated to be an Addendum, which is issued by the Principal varying, updating or clarifying the RFT prior to the stated time and date for closing of the RFT.

**‘Contract’** means the documents comprising the Contract set out or referenced in Part C of this RFT.

**‘Principal’** means the Northern Land Council.

**‘RFT’** means this request for tender inviting offers and includes all conditions, annexures, schedules, attachments and addenda.

**‘Tender Response’** means all documents lodged by the Tenderer in response to the RFT.

**‘Tenderer’** means the person lodging a Tender Response.

**‘Works’** means the works required by the Principal and described in this RFT.

### 2.2 STRUCTURE OF THIS REQUEST FOR TENDER

This RFT is in four parts as follows:

|               |  |
|---------------|--|
| <b>Part A</b> | Introduction and Conditions of Tendering |
| <b>Part B</b> | Project Brief                            |
| <b>Part C</b> | Contract                                 |
| <b>Part D</b> | Tender Response Schedule                 |

### 2.3 PREPARING A TENDER RESPONSE

#### 2.3.1 General Requirements

Each Tender Response is required to contain one copy of the documents listed in the clause titled “Documents to be Lodged” in these Conditions of Tendering.

Tender Responses should contain:

- a) if the Tenderer is one or more individuals, the full names of each party;
- b) if the Tenderer is one or more company or organisation, each company, business or trading name and each unique business identifier required by law (eg. ACN/ARBN/ABN);

## CONDITIONS OF TENDERING

---

- c) the address for service of any notices necessary or required to be or which may be served on or given to the Tenderer in connection with its Tender Response and any subsequent contract arising out of acceptance of the Tender Response.

Each Tender must be in English. A Tender that does not comply with this requirement will be declared inadmissible for assessment.

### 2.3.2 Tenderers to Inform Themselves

Tenderers must, at their own expense, inform themselves of all circumstances and conditions relating to submitting a Tender Response and carrying out the Works. This includes compliance with all legislation, an inspection of the relevant site(s) and satisfying themselves as to the correctness and sufficiency of the RFT documentation.

### 2.3.3 Tender Costs

Tenderers must, at their own expense, inform themselves of all circumstances and conditions relating to submitting a Tender and carrying out the Works. This includes compliance with all legislation, an inspection of the relevant site(s) and satisfying themselves as to the correctness and sufficiency of the RFT documentation.

The Principal will not be liable for any expense or loss, which may be incurred by any Tenderer in the preparation or submission of its Tender Response.

### 2.3.4 Enquiries and Principal's Contact Person

Should the Tenderer:

- a) have any doubts as to the meaning of any part of the RFT; or
- b) find any discrepancy, error or omission in the RFT,

the Tenderer should seek clarification from the person listed below, as early as possible but in any event before the stated time and date for closing of the RFT.

|  |           |                            |
|--|-----------|----------------------------|
| For enquiries about the Works contact: | Name      | Emanuel Milatos            |
|  | Telephone | 08 8943 6900               |
|  | Email     | tenderenquiries@nlc.org.au |

The Principal may decline to provide a clarification or further information requested by a Tenderer.

Any clarification provided by the Principal may be provided to all prospective Tenderers.

### 2.3.5 Probity Advisor

The Principal has appointed an independent probity advisor to advise on probity issues arising during the course of the RFT process. The details of the probity advisor are set out below. Any issues about the integrity of the RFT process should be addressed to the probity advisor.

|                 |           |                                 |
|-----------------|-----------|---------------------------------|
| Probity Advisor | Company   | Merit Partners                  |
|                 | Name      | MunLi Chee                      |
|                 | Telephone | 89821444                        |
|                 | Email     | munli.chee@meritpartners.com.au |

## CONDITIONS OF TENDERING

### 2.3.6 Addendum

The Principal may vary, update or clarify the RFT at any time before the stated time and date for closing of the RFT through the issue of an Addendum.

No explanation or amendment to the RFT will be binding unless in the form of an Addendum. Any Addendum issued under this clause will become part of this RFT.

It is the sole responsibility of Tenderers to ensure that the contact details held by Quotations and Tenders Online Service are correct and up-to-date in order for them to receive an Addendum.

### 2.3.7 Best Offer

Notwithstanding anything which may be done pursuant to the assessment process, the Principal intends to select the successful Tenderer primarily on the basis of the Tender Responses lodged but will also take into consideration any other information publicly available or known to the Principal. Accordingly, Tenderers should provide their best offer in their Tender Response.

## 2.4 TENDER RESPONSE VALIDITY

Tender Responses must remain valid and open for acceptance by the Principal for a period of 90 days.

Upon the expiry of the validity period:

- a) a Tenderer may withdraw their Tender Response by written notice to the Principal; or
- b) the Principal may, by close of business on the date of expiry, request an extension to the validity period.

## 2.5 SITE INSPECTION

Prior to submitting a Tender Response the Tenderer is encouraged to inspect the site(s) relevant to the Works. Access to the site(s) will be made available at the following times and date:

|  |  |                 |
|--|--|-----------------|
| Contact for site inspection                | Name                                       | Emanuel Milatos |
|  | Telephone                                  | 08 8943 6900    |
| Location of site(s)                        | Lot 3472 Chardon Street,<br>Katherine East |                 |
| Designated Time/Day for Inspection/Meeting | 30 November 2023, 11am                     |                 |
| Attendance at Site Inspection              | <b>Not Mandatory</b>                       |                 |
| Registration Required                      | Yes  |                 |

Any subsequent site inspections will be solely at the Principal's discretion and, where subsequent site inspections are organised, Tenderers will be advised and invited to attend by issue of an Addendum.

## 2.6 INDUSTRY BRIEFING

An industry briefing is not applicable to this RFT.

## 2.7 INDUSTRY ACCREDITATION

The Tenderer is required, at the time and date for closing of the RFT, to be accredited or recognised by Contractor Accreditation Limited ('CAL').

## CONDITIONS OF TENDERING

Accreditation must be to a rating that is equal to or higher than the total value of the Tender Response in the CAL category and group described below.

|                                     |
|-------------------------------------|
| Industry Accreditation Requirements |
|-------------------------------------|

|                                  |
|----------------------------------|
| BUILDING / NON RESIDENTIAL URBAN |
|----------------------------------|

The Tender Response should include the Tenderer's CAL registration number.

If, at the time and date for closing of the RFT, the Tenderer requires an upgrade of the rating of its existing CAL accreditation, in the applicable category and group, the Tenderer has fourteen (14) calendar days from the stated time and date for closing of the RFT to:

- a) obtain an upgrade of the rating of that existing CAL accreditation; and
- b) provide written evidence of the upgrade to the Principal's contact person identified in paragraph 2.3.4 of this document.

Nothing in this clause allows a Tenderer to obtain CAL accreditation in a new CAL category and group after the stated time and date for closing of the RFT.

Any Tender Response not complying with the requirements of this clause may be declared inadmissible for assessment.

The Tenderer must ensure that each sub-contractor engaged in the provision of Works equal to or greater than \$100,000 is accredited or recognised by CAL at the time and date of closing of the RFT.

More information on CAL, accreditation details and application forms can be obtained from:

CAL Registrar  
 PO Box 125  
 Parap NT 0804  
 Telephone: (08) 8922 4600  
 Facsimile: (08) 8984 4003  
 Website: [www.accreditation.com.au](http://www.accreditation.com.au)

## 2.8 ALTERNATIVE TENDERS

Tenders are required to be submitted strictly in accordance with the RFT document and no alternatives will be considered.

Tenderers are encouraged to offer options or solutions, which may (for example in a novel or innovative way), contribute to NLC's ability to carry out its business in a more cost-effective manner. These may be related to the outputs; or functional, performance and technical aspects of the requirement and will be assessed under the 'Innovation' Assessment criteria.

## 2.9 PART OFFER AND PART ACCEPTANCE

Tenders are required to be submitted for the whole of the Works.

## 2.10 PRICING

### 2.10.1 General Requirements

Unless otherwise specified, prices must:

- a) be stated in Australian dollars;
- b) be inclusive of:



## CONDITIONS OF TENDERING

---

- i. GST (where applicable);
- ii. all costs required to carrying out the Works, including labour, materials, transport, freight, overheads, profits and charges; and
- iii. all taxes, fees, duties, royalties, premiums, costs, charges and the like which will be due and payable to any person or authority under the Contract.

Unless otherwise required, pricing must be submitted for each item in the schedule and failure to price all items may result in the Tender Response being declared inadmissible for assessment.

### 2.10.2 Estimated Quantities

Unless otherwise specified, any quantities given in the RFT are not guarantees as to the amount of work to be provided to the successful Tenderer, but will be used for assessment purposes only.

### 2.10.3 Treatment of Low or Aberrant Prices

Where a price (or a key element of a Tender Response price) is considered well below or above the median price or the Principal's estimated value, the Tenderer may be requested to confirm the tendered price or respond to questions regarding particular aspects of the Tender Response. The Tenderer may also be requested to provide written confirmation that the requirement and contractual obligations relevant to the Works are fully understood.

The Principal may, at its discretion, either:

- a) proceed with the evaluation of the Tender Response; or
- b) where there is evidence that acceptance of the Tender Response may result in an unacceptable contract outcome or pose a substantial risk to the completion of the Works or the sustainability of the Tenderer, set the Tender Response aside from further assessment.

For the avoidance of doubt, the Principal may set aside a Tender Response without seeking further information or confirmation from the Tenderer.

## 2.11 IMPARTIALITY OF REQUIREMENTS

Unless otherwise specified, if an item is specified in the Project Brief as being similar or equivalent to a particular brand of product, this is intended for information purposes to set an acceptable standard only, and no preference is given to that brand.

Any items offered must be at least of the same standard and potential as specified in the Project Brief, or as is inherent in the equivalent brand. The Principal may accept items of higher standard than specified if the items offer better value for Project outcomes. Where such is being offered by the Tenderer, full details by way of illustrations, catalogues, brochures and the like, should be provided with the Tender Response.

## 2.12 CONFLICT OF INTEREST

For the purpose of this clause a "Conflict" means any matter, circumstance, interest, or activity affecting the Tenderer (including the officers, employees, agents and sub-contractors of the Tenderer) which may or may appear to impair the ability of the Tenderer to perform the Contract diligently and independently.

Tenderers must declare any Conflict in their Tender Response.

Tenderers must not place themselves in a position that may, or does, give rise to a Conflict during the RFT process.

If at any time during the RFT process, a Tenderer is aware that an actual, potential or perceived Conflict exists or may arise, that Tenderer must immediately notify the Principal.

## CONDITIONS OF TENDERING

If a Conflict exists or arises during the RFT, the Principal may:

- a) declare the Tender Response inadmissible for assessment;
- b) enter into discussions to seek to resolve the Conflict; or
- c) take any other action it considers appropriate.

### 2.13 PROJECT CONTROL

The Works required under the Contract are to be carried out using ISO 9000 Quality Assurance.

The Tenderer's attention is drawn to the section titled "Quality Assurance" in the Project Brief.

The Tenderer is required to submit a project quality plan proposal with the Tender Response.

Any Tender Response in which the project quality plan proposal is not provided may result in the Tender Response being declared inadmissible for further assessment.

### 2.14 WORK HEALTH AND SAFETY ACCREDITATION SCHEME

The successful Tenderer must be accredited under the WHS Accreditation Scheme as at the Award Date and maintain accreditation while the Works are being carried out.

The successful Tenderer must comply with all conditions of accreditation under the WHS Accreditation Scheme.

### 2.15 LOCAL CONTENT

The Principal seeks to support businesses that use local contractors and suppliers and hire and train Territorians. Assessment will take into consideration businesses that demonstrate a commitment to supporting and employing Territorians including Indigenous Territorians, accredited training for its employees and sourcing goods and services from local businesses.

#### 2.15.1 Apprentices and Trainees

The Tenderer will, if awarded the Contract, employ and train, or maintain, a minimum number, as prescribed below, of apprentices/trainees who are registered in the Northern Territory:

##### Schedule of Minimum Number of Apprentices/Trainees.

| Value Of Contract (\$000) | Trade Apprentice/Trainee | Non-Trade Trainee |
|---------------------------|--------------------------|-------------------|
| 300 – 599                 | 1                        | -                 |
| 600 – 999                 | 2                        | -                 |
| 1000 – 1999               | 3                        | 1                 |
| 2000 – 2999               | 4                        | 1                 |
| 3000 – Plus               | 5                        | 1                 |
| Maximum Requirement       | 5                        | 1                 |

Employees undertaking apprenticeships/traineeships training will only be recognised for assessment purposes if:

- a) a signed training contract for the apprentice/trainee is registered with Australian Apprenticeships NT; or
- b) the apprentice's/trainee's details appear on the Data Entry Level Training Agreement (DELTA) database, maintained by the Department of Trade, Business and Innovation; or

## CONDITIONS OF TENDERING

---

- c) the training being undertaken is a recognised accredited training course.

In complying with the use of accredited apprentices/trainees, the Tenderer may:

- a) directly employ apprentices/trainees;
- b) utilise group training scheme apprentices/trainees;
- c) utilise sub-contractors apprentices/trainees; or
- d) utilise any combination of the above.

For contract values of \$1 million and above one (1) non-trade trainee may be substituted for a trade apprentice/trainee for the purpose of determining compliance with the Schedule of Minimum Number of Apprentices/Trainees.

The level of compliance with this requirement will be audited in contract and reported on at the end of the Contract.

### 2.15.2 Indigenous requirements for Regional Councils

The Tenderer will, if awarded the Contract, maintain an indigenous employment rate which will be no less than ten per cent (10%) of the total workforce engaged in the delivery of the Works.

### 2.15.3 Indigenous Development Plan

The Works have been identified as an opportunity to develop employment outcomes for Indigenous Territorians. The Tenderer is required to submit, as part of its Tender Response, an Indigenous Development Plan Proposal.

Any Tender Response not complying with the requirements of this clause may be declared inadmissible for further assessment.

## 2.16 SIGNING DOCUMENTS

The Tenderer is required to sign its Tender Response as indicated below:

- a) If the Tenderer is a company:
  - i. with its common seal, and the fixing of the seal witnessed by:
    - two (2) directors of the company; or
    - a director and a company secretary of the company; or
    - for a proprietary company that has a sole director who is also the sole company secretary – that director; or
  - ii. without its common seal, if signed by:
    - two (2) directors of the company; or
    - a director and a company secretary of the company; or
    - for a proprietary company that has a sole director who is also the sole company secretary – that director; or
  - iii. by being signed by a person or persons authorised by the company to bind it in contract. In such circumstances a copy of the authorisation must be submitted with the Tender Response.
- b) In the case of a firm (including a firm trading under a business or trading name and a partnership):
  - i. by signature of each proprietor of the firm; or

## CONDITIONS OF TENDERING

in the case of firms having more than five (5) proprietors, by signature of the proprietors authorised to bind the firm in Contract. In the case of the latter evidence of the authority of those proprietors to bind the firm may be required by the Principal.

### 2.17 LODGEMENT OF TENDER RESPONSE

#### 2.17.1 Lodgement

Unless otherwise directed by the Principal, Tender Responses must be lodged using the following method:

- a) Electronically through the Tenderlink portal (<https://portal.tenderlink.com/nlc>) as stated on the cover of the RFT. Tenderers shall note that the maximum size of the lodgement is limited to 2GB in total.

Failure to comply with the above requirements may result in the Tender Response being declared inadmissible for assessment.

If, for any reason, a part of a Tender Response (excluding the pricing schedule(s)) becomes corrupt, illegible, inadequate or incomplete as a result of transmission or storage, the Principal may request an additional copy of the Tender Response.

If, for any reason, the pricing schedule(s) contained in a Tender Response becomes corrupt, illegible, inadequate or incomplete as a result of transmission or storage the Tender Response may be declared inadmissible for assessment.

|                                       |       |  |
|---------------------------------------|-------|--|
| For enquiries about lodgement contact | Name  | Billy Anutara Angul  |
|                                       | Email | <a href="mailto:tenderenquiries@nlc.org.au">tenderenquiries@nlc.org.au</a> |

#### 2.17.2 Documents to be Lodged

The Tenderer will complete in full and submit one copy of the documents listed below.

Failure to provide all documents may result in the Tender Response being declared inadmissible for assessment.

| Documents to be Lodged  |
|---|
| TENDERER DETAILS AND KEY INFORMATION<br>LUMP SUM PRICE AND BREAK-DOWN<br>SCHEDULE OF ASSUMPTIONS AND DEPARTURES<br>RESPONSES TO ASSESSMENT CRITERIA (INCLUDING ATTACHED PLANS WHERE REQUIRED) |

#### 2.17.3 Closing Time and Date

The RFT will close at the time and on the date stated on the front cover of the RFT.

#### 2.17.4 Late Tenders

Tender Responses are to be received, in full, by the time and date for closing of the RFT.

Failure to lodge a Tender Response, or part thereof, before the time and date for closing of the RFT may result in the Tender Response being declared inadmissible for assessment.

## CONDITIONS OF TENDERING

---

### 2.18 ADMISSIBILITY

#### 2.18.1 General

Unless otherwise specified, if a Tenderer fails to comply with a requirement as set out in these Conditions of Tendering, their Tender Response may be declared inadmissible for assessment.

In determining whether a Tender Response is admissible for assessment the Principal will consider:

- a) whether admitting the Tender Response will compromise the integrity of the tender process;
- b) whether the Tenderer has or is likely to gain an unfair advantage;
- c) reasons for the Tenderer's failure to comply with a requirement;
- d) whether the Tender Response is capable of assessment;
- e) whether the Tender Response was mishandled by the Principal or a third party; and
- f) evidence of unfair practices.

#### 2.18.2 Bankruptcy/Insolvency

The Principal may, in its absolute discretion, declare a Tender Response inadmissible for assessment in circumstances where the Tenderer is bankrupt or in liquidation.

#### 2.18.3 Improper Conduct / Corrupt Conduct

The Principal may, in its absolute discretion, declare a Tender Response inadmissible for assessment where, in the reasonable opinion of the Principal (being based on fact or a reasonable belief), the Tenderer has engaged in "improper conduct" as that term is defined in the Independent Commissioner Against Corruption Act 2017 (NT) and/or "corrupt conduct" as defined by the National Anti-Corruption Commission Act 2022 (Cth).

### 2.19 OWNERSHIP OF DOCUMENTS

All Tender Responses become the property of the Principal upon submission and will not be returned to Tenderers.

By lodging a Tender Response, a Tenderer licenses the Principal to reproduce the whole or any portion of the Tender Response for the purposes of the conduct of the RFT, including assessment, clarifications, resultant contract negotiation, contract management, and anything else in relation to these purposes.

Nothing in this clause changes or affects the ownership of copyright or other intellectual property rights that may subsist in the Tender Response.

### 2.20 CHANGES TO THE CONDITIONS

#### 2.20.1 Conditions of Tendering

Tenderers are not permitted to request changes or propose alternatives to these Conditions of Tendering.

Any Tenderer who proposes a change will be requested to withdraw the change in order to comply with the Conditions of Tendering.

If the changes are not withdrawn the Tender Response will be declared inadmissible for assessment.

#### 2.20.2 Conditions of Contract

Tenderers may request changes, or propose alternatives to the terms and conditions of the Contract applicable to the Works.

## CONDITIONS OF TENDERING

---

Where Tenderers request changes to the Contract or propose alternative conditions of contract, they are required to clearly specify in section 4 of Part D - Tender Response Schedule (Assumptions and Departures) the changes to the Contract that are being requested or the alternative conditions of contract that are being proposed.

Where Tenderers request changes to the Contract or propose alternative conditions of contract, they do so at their own risk, as the changes will be deemed to have formed part of their Tender Response and their Tender Response will be assessed on that basis. If the requested changes or the alternative conditions of contract are not acceptable to the Principal, the Tender may not be successful.

Nothing in this section 2.20.2 affects the NLC's right to negotiate with one or more Tenderer as provided for in this RFT.

If the Tenderer requests changes, it should give details of proposed or amended Contract clauses listing:

- a) the specific clause;
- b) the reasons for exception; and
- c) details of any replacement clause.

Alternative or proposed drafting may be provided by means of a Microsoft Word version of the Contract with the amendments shown using the "Track Changes" feature.

A failure to comply with the above requirements may result in the Tenderer's Tender being declared inadmissible for assessment.

### 2.21 TENDER ASSESSMENT CRITERIA

Selection of the successful Tenderer will be based on an assessment of Tender Responses against the tender assessment criteria specified in this clause 2.21.

An example of the types of considerations that may form part of each criterion are set out below, these elements are not to be considered exclusive to any specific RFT.

- a) Past Performance:
  - i. Performance history including experience in completing similar Works and the extent to which previous undertakings were achieved.
  - ii. Standard and quality of Works previously completed.
  - iii. Extent of supervision previously required.
  - iv. Disputes and claims history.
  - v. References (including CAL if applicable).
  - vi. Safe and fair workplace record.
- b) Timeliness:
  - i. Ability to manage the completion of the Works within timeframes specified.
  - ii. Vulnerabilities to the completion timeframe.
- c) Capacity:
  - i. Ability to complete the Works including the experience and capacity of nominated personnel or sub-contractors.
  - ii. Number, details and value of contracts currently in progress.
  - iii. Appropriate CAL accreditation (if applicable).
  - iv. Legal action pending.
  - v. Financial capacity (including current credit rating).
  - vi. Risk.
- d) Local Content:
  - i. Local Representation

## CONDITIONS OF TENDERING

- ii. Enhancement of industry and business capability in the Northern Territory.
  - iii. Improved capacity and quality in carrying out the Works.
  - iv. Accredited training programs currently supported by the Tenderer or that will be supported or utilised in carrying out the Works.
  - v. Proposed level of usage of apprentices and trainees in carrying out the Works.
  - vi. Proposed number of jobs for Territorians that will be supported or utilised in carrying out the Works.
  - vii. Proposed level of involvement of local Indigenous enterprise in the Works.
  - viii. Proposed level of usage of Territory Enterprises as sub-contractor or suppliers.
  - ix. Regional development opportunities.
  - x. Any Northern Territory research and development proposals being undertaken or proposed by the Tenderer.
- e) Price:
- i. Upfront costs.
  - ii. Through-life costs, for example:
    - Cost of ongoing training of Agency staff; and
    - Cost of transit in and out or implementation from one provider to another.
  - iii. Any other factors that would impact on costs to the Principal.
  - iv. Where a shortlisting process is utilised, Price will not be the only determining factor.

### 2.21.1 Disclosure of Weightings

Assessment criteria and percentage weightings applicable to the RFT are as follows:

|                  |             |
|------------------|-------------|
| Price            | 20%         |
| Past Performance | 25%         |
| Local Content    | 30%         |
| Timeliness       | 5%          |
| Capacity         | 20%         |
| <b>TOTAL</b>     | <b>100%</b> |

## 2.22 CONDUCT OF THE ASSESSMENT

### 2.22.1 General

For the purpose of the assessment, clarification, negotiation and reporting of this RFT the Principal may disclose information acquired or developed during the assessment process (including a copy of the Tender Response) to Ministers and other Government representatives, consultants, advisors, other Agencies and statutory authorities in order to comply with obligations, exercise rights under this RFT and enable effective management or auditing of the Principal's activities.

### 2.22.2 Clarification and Additional Information

The Tenderer may be called upon to clarify information contained in their Tender Response or to supply information in addition to the Tender Response to demonstrate to the satisfaction of the Principal that the Tenderer has the ability to carry out the Works.

The Tenderer must within the time specified comply with any such requests. Failure to submit any or all of the information required, in the time stipulated, may result in the Tender Response being declared inadmissible for further assessment.

## CONDITIONS OF TENDERING

---

### 2.22.3 Security, probity and financial checks

The Principal reserves the right during any part of the assessment of Tender Responses to perform such security, probity and financial investigations and checks as the Principal may determine are necessary in relation to Tenderers, their employees, officers, partners, associates, sub-contractors or related entities and their employees, officers and sub-contractors. These checks may include (without limitation) ascertaining in relation to each Tenderer:

- a) security;
- b) financial viability and stability;
- c) managerial and technical capacity;
- d) corporate history;
- e) significant litigation (past, present or pending); and
- f) any other matters the Principal considers relevant.

Tenderers must, at their cost, promptly provide the Principal with such information or documentation that the Principal requires in order to undertake such investigations or checks.

The Principal may declare a Tender Response inadmissible for further assessment if the Tenderer does not promptly provide all reasonable assistance to the Principal in this regard or based on the outcomes of the investigations or checks.

### 2.22.4 Tender Response Shortlisting Process

#### 2.22.4.1 General

All admissible Tender Responses will be subject to the shortlisting process set out at clause 2.22.4.2.

#### 2.22.4.2 Shortlisting

- a) Tender Responses will be shortlisted based on (in summary, and without limitation) the Tender Assessment Criteria including consideration of:
  - i. completeness of response;
  - ii. local content;
  - iii. past performance;
  - iv. capacity
  - v. whether the Tender Response presents an acceptable level of risk to the Principal; and
  - vi. price.
- b) The Principal reserves the right, in its absolute discretion, to shortlist any number of Tender Responses, including one or more, all or none of the Tender Responses.
- c) The Principal is not obliged to shortlist the lowest priced Tender Responses.
- d) The Principal reserves the right, in its absolute discretion, to shortlist Tender Responses by taking into account any other factors it deems necessary and appropriate.
- e) The Principal reserves the right at its absolute discretion, to remove a Tender Response from the shortlist at any time for any reason and will notify the Tenderer of its removal from the shortlist without any obligation to provide reasons for the removal.

#### 2.22.4.3 Shortlisted Tender Responses

- a) If a Tender Response is shortlisted, the Tenderer will be notified in writing by the Principal of that fact.
- b) Shortlisted responses will then proceed to the detailed assessment.



## CONDITIONS OF TENDERING

### 2.22.4.4 Non-shortlisted Tender Responses

- a) Where a Tender Response is not shortlisted, the Tenderer will be notified in writing by the Principal of that fact.
- b) Non-shortlisted Tender Responses will be held in reserve to be considered in the event that the Principal elects not to proceed with any Shortlisted Tender Responses.
- c) A Tenderer that has received notification under clause 2.22.4.4(a) shall be entitled to withdraw their Tender Response by giving the Principal written notice of such withdrawal within 5 Business Days of receiving the notice under clause 2.22.4.4(a).
- d) Where a Tenderer's Tender Response was not shortlisted under clause 2.22.4.4, that Tenderer will not be entitled to request a debriefing as to why their Tender Response was not shortlisted.

### 2.23 NEGOTIATIONS

- a) The Principal may engage in detailed discussions and negotiations with one or more Tenderers.
- b) The selection of Tenderers under this clause does not bind the Principal to a contractual relationship and is not an indication that the Tenderer will be successful.
- c) The result of any successful negotiations will be incorporated into the Contract.

### 2.24 NOTIFICATION OF ACCEPTANCE

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

The successful Tenderer will be notified in writing on the completion of the RFT process (including finalisation of any negotiations as referred to in section 2.23 above) ('**Notice of Acceptance**').

Notwithstanding issue of a Notice of Acceptance under this section 2.24, no binding contract will be formed between the successful Tenderer and the Principal until the Tenderer and the Principal have signed the Contract via execution of the Formal Instrument of Agreement, and for this purpose the Tenderer must take all necessary steps to execute the Formal Instrument of Agreement when required by the Principal.

No other document issued or made available and no other representation made or conduct engaged in, by or on behalf of the Principal (other than execution of the Formal Instrument of Agreement) will be deemed to be acceptance of a Tenderer's Tender or to create any contractual or other legal relationship which is binding on the Principal or otherwise oblige the Principal to enter into a contract with the Tenderer.

A Tenderer should not act on any representations or statements made by the Principal, its employees or agents prior to the issue of the Notice of Acceptance.

The Principal may publish details of the successful Tender Response, including the name and address of the Tenderer, value of the contract awarded and a description of the Works.

### 2.25 UNSUCCESSFUL TENDER RESPONSES

Unsuccessful Tenderers will be informed in writing of the outcome of their Tender Response at the conclusion of the RFT process.

### 2.26 NLC'S DISCRETIONARY RIGHTS

Notwithstanding any other provision of this RFT, the NLC may do any one or more of the following at any time in its absolute discretion without giving reasons:

- a) alter the RFT process including the design of the process at any time including suspending or terminating the process, changing the nature of or omitting any phase or adding additional phases;

- b) select and engage in detailed discussions and negotiations with any Tenderer, despite any non-compliance with the terms of this RFT in that Tenderer's Tender and irrespective of whether or not such non-compliances exist in the Tenders submitted by other Tenderers;
- c) change the tender assessment criteria (but only before the closing date and time);
- d) waive any requirement of the RFT;
- e) reject any or all Tenders due to any non-compliance with this RFT or for any reason;
- f) terminate further participation in the RFT process by any Tenderer;
- g) adopt different approaches with different Tenderers;
- h) negotiate with one or more Tenderers and enter into the Contract without prior notice to any other Tenderer;
- i) invite best and final offers from any one or more Tenderers;
- j) readvertise for new tenders or enter into discussions with any new party in respect of the Works;
- k) take such other action as it considers, in its absolute discretion, appropriate in relation to the RFT process; or
- l) reassess how and to what extent it will continue with the RFT process or otherwise progress the Works.

To the extent permitted by law, Tenderers will have no claim against the NLC arising out of the NLC's exercise, or failure to exercise, any rights under this RFT.

## 2.27 PUBLICITY

The Tenderer must:

- a) not furnish any information or issue any document or other written or printed material concerning the RFT process, the Project or the Works for publication in the media (including social media) without the NLC's prior written approval; and
- b) refer any enquiries from the media concerning the RFT process, the Project or the Works to the Principal's Representative.

## 2.28 INFLUENCE

The Tenderer must not seek to influence any of the NLC officers, employees or advisors in relation to this RFT. At the sole discretion of the NLC, any breach may lead to the Tenderer's exclusion from the RFT process.