

Terms and Conditions

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1.1 INVITATION

1.1.1 Public Authority's Requirements

The Public Authority invites You to make a Response in accordance with this Invitation for the provision of the Public Authority's Requirements.

The Public Authority is seeking a more detailed understanding of the supplier market and range of solutions that may be available.

1.1.2 Accuracy of Invitation

The Public Authority makes no promise or representation that any factual information supplied in or in connection with this Process or Invitation is accurate.

Information is provided in good faith and the Public Authority will not be liable for any omission from this Invitation.

1.1.3 Your Use of Invitation

Without the express prior written consent of the Public Authority, You must not re-produce, re-advertise and/or in any way use the contents of this Invitation either in whole or in part, other than for the purpose of preparing and lodging a Response.

1.1.4 EOI Process does not create a contract

Your participation in this EOI Process, (including the preparation and lodgement of Your Response), is at Your sole risk.

Nothing in this Invitation, the EOI Process, or Your Response must be construed as creating any binding contract or other legal relationship (express or implied) between You and the Public Authority.

1.2 Your Response

1.2.1 Format of Response

Your Response must:

- a) be in English
- b) be endorsed by an appropriately authorised officer with any alterations or prices clearly and legibly stated and any alterations initialled
- c) quote prices in Australian Dollars that are GST inclusive and, in relation to GST, must state where the GST is applicable and show that amount separately

The Public Authority may disregard any content in a Response that is illegible.

1.2.2 Cost of Preparing Your Response

You are responsible for the cost of preparing and submitting Your Response(s) and all other costs arising from Your participation in this EOI Process.

1.2.3 Lodging A Response

The Public Authority may extend the Closing Date and Time in its absolute discretion.

1.2.4 Electronic Lodgement

You must virus check any Response (including all constituent files and/or documents) before lodging electronically.

You are encouraged to lodge Your Response at least two hours before the Closing Date and Time.

Where a Response is lodged electronically via email or the Website, each lodgement will be regarded as full and complete. If You need to modify a single document or a group of documents, You will need to submit all documents again.

Response(s) lodged electronically cannot exceed 20MB.

1.2.5 Late Responses

If a Response is lodged after the Closing Date and Time, it may be ineligible for consideration unless:

- a) the Public Authority determines in its sole discretion that the Public Authority has caused or contributed to the failure to lodge by the Closing Date and Time; or
- b) the Public Authority decides that exceptional circumstances exist which warrant consideration of the late Response and that acceptance of the late Response does not compromise the integrity of the EOI Process.

1.2.6 Public Authority's Use of Your Offer Materials

Upon lodgement, all of Your Response Materials will become the property of the Public Authority.

Intellectual Property owned by You or any third parties forming part of the Response Materials will not pass to the Public Authority with the physical property comprising the Response Materials. However, You acknowledge and agree that You have the authority to grant to the Public Authority an irrevocable, royalty free licence to use, reproduce and circulate any copyright material contained in the Response to the extent necessary to conduct the Evaluation and in the preparation of any resultant contract.

1.3 Consortia and Sub-Contracting

1.3.1 Consortia

If You are a member of a consortium then your Response must stipulate which part(s) of the Public Authority's Requirements that each entity comprising the consortium will provide and how the entities will relate with each other to ensure full provision of the Public Authority's Requirements. All consortium members that are not natural persons are to provide details relating to their legal nature and any relevant corporate structure.

The Public Authority will treat You as the preferred contact person for any consortium Response.

1.3.2 Sub-contracting

If Your Response relies on a sub-contracting arrangement, then You must stipulate in Your Response the tasks that the proposed sub-contractor(s) would undertake. You remain legally responsible for meeting the Public Authority Requirements.

1.4 EOI Process Conduct

1.4.1 Your Conduct

You must:

- a) Unless otherwise advised by the Contact Person, ensure all communications are undertaken via the Contact Person
- b) declare any actual or potential conflict of interest
- c) not employ or otherwise engage any person who has either a present or past duty to the Public Authority in relation to this Procurement Process as an adviser, consultant, or employee
- d) not offer any incentive to, or otherwise attempt to influence or provide any form of personal inducement, reward or benefit to any employee or representative of the Public Authority or any member of an evaluation team at any time
- e) not directly or indirectly approach any employee or representative of the Public Authority (other than the Contact Officer) to lobby or solicit information in relation to the Invitation.
- f) not engage in any collusive or anti-competitive conduct with any Supplier
- g) comply with all laws in force in South Australia applicable to this EOI Process
- h) disclose whether You are acting as agent, nominee or jointly with another person(s) and disclose the identity of the other person(s)
- i) not issue any news releases or responses to media enquiries and questions regarding this EOI Process or this Invitation without the Public Authority's written approval.

If You act contrary to the expectations outlined above, the Public Authority reserves the right (regardless of any subsequent dealings) to exclude Your Response from further consideration.

1.4.2 Public Authority Conduct

The Public Authority will:

- a) preserve the confidentiality of any information marked as confidential (subject to conditions concerning confidentiality)
- b) give Suppliers the opportunity to compete fairly.

1.4.3 Confidentiality

You must identify any aspect of Your Response that You consider should be kept confidential including reasons. The Public Authority is not obliged to treat information as confidential and in the absence of any agreement to do so, You acknowledge that the Public Authority has the right to publicly disclose the information.

Any condition in Your Response that seeks to prohibit or restrict the Public Authority's right to disclose will not be accepted.

Notwithstanding any undertaking regarding confidentiality, by submitting a Response, You agree that the Public Authority may forward information relating to You or Your Response to the Australian Competition and Consumer Commission (ACCC) if the Public Authority reasonably suspects or is notified by the ACCC that it reasonably suspects, that there is cartel conduct or unlawful collusion in relation to this EOI Process (whether or not the suspicion relates to Your Response).

Information supplied by or on behalf of the Public Authority is confidential to the Public Authority and You are obliged to maintain its confidentiality. You may disclose confidential information to any person that has a need to know the information for the purposes of submitting Your Response.

1.5 Evaluation Process

1.5.1 Evaluation

In evaluating Responses, the Public Authority will consider:

- a) the Evaluation Criteria
- b) references from referees (where applicable)
- c) any presentations, interviews, or site visits (where applicable)
- d) any other information that the Public Authority considers relevant.

Where mandatory criteria are specified in the Invitation Summary and Your Response does not comply with these criteria the Public Authority may choose not to further evaluate Your Response.

The Public Authority may seek the advice of external consultants to assist the Public Authority in evaluating the Responses.

The Public Authority may in its absolute discretion:

- a) take into account any relevant consideration when evaluating Responses
- b) invite any person or entity to lodge a Response
- c) allow a Supplier to change its Response
- d) consider, decline to consider, or accept (at the Public Authority's sole discretion) a Response lodged other than in accordance with this Invitation
- e) seek further information from You regarding Your Response including but not limited to requests for additional information or presentations by, or interviews with You or Your key personnel
- f) seek and evaluate relevant financial viability data concerning any Suppliers' business and related entities including seeking any assistance from third party providers
- g) make enquiries of any person or entity to obtain information about any Supplier and its Response (including but not limited to the referees)

h) visit facilities operated by any Supplier, proposed subcontractors of any Supplier and/or by their customers in order to assess their capabilities and performance (at a mutually convenient time).

1.5.2 Discontinue Process

The Public Authority may decide not to proceed any further with the EOI Process for the Public Authority's Requirement.

1.5.3 Shortlisting

The Public Authority may choose to short-list some Suppliers and continue evaluating Responses from those short-listed Suppliers. The Public Authority is not at any time required to notify You, any Supplier or any other person or organisation interested in making a Response of its intentions or decision to short-list.

1.5.4 Negotiation

The Public Authority may choose to:

- a) enter into negotiations with You or any Supplier (including parallel negotiations with more than one Supplier) in order to vary its Response on grounds of capability / capacity, technical issues, cost, effectiveness, to finalise agreement on the terms of the contract, or any other matters
- b) re-evaluate Responses generally after any negotiation
- c) suspend, discontinue, or terminate at any time negotiations with You or any Supplier or any other person or organisation
- d) negotiate with You or any Supplier for the provision of any part of the Public Authority's Requirement and negotiate with any other Supplier with respect to the same or other parts of the Public Authority Requirement and to enter into one or more contracts for part or parts of the Public Authority's Requirement
- e) negotiate at any time with any organisation that is not a Supplier and enter into a contract in relation to the Public Authority Requirement or any part of the Public Authority's Requirement with that organisation on such terms as the Public Authority, at its absolute discretion, considers appropriate

1.5.5 Secondary Procurement Process

After evaluating all Suppliers' Responses, the Public authority may choose to conduct a subsequent procurement process.

1.5.6 Further Approach to Market

The Public authority may choose to make a further approach to market on a similar or different basis than that specified in this Invitation.

1.6 Complaints and Feedback About EOI Process

1.6.1 Complaints

If at any time during the EOI Process, You consider that You have been unfairly treated, You must first notify the Contact Person in writing.

If the matter is not resolved, You may then notify the nominated Complaints Officer in writing setting out the details of the complaint.

The issue will then be dealt with in accordance with the Public Authority's complaint management process.

1.6.2 Supplier Feedback

You may provide feedback directly to the Public Authority through the Contact Person.

If You access this Invitation via the SA Tenders and Contracts website, You can provide anonymous feedback using the survey tool on the website:

<https://www.tenders.sa.gov.au/tenders/index.do>.

A link to the survey tool is also available on the Procurement Services SA website at: <http://www.procurement.sa.gov.au>

Your feedback may be provided, either:

- a) after You have downloaded the Invitation but decided not to proceed with lodging a Response or,
- b) at the end of the EOI Process following debrief or contract award (as applicable).

If using the survey tool for the first time, additional information about the Supplier feedback initiative is included on both websites.

1.6.3 Government Policies

South Australian Government policies apply to all South Australian Government purchasing and related activities.

1.6.4 South Australian Industry Participation Policy

Government agencies and private parties contracting to the Government of South Australia are required to comply with the South Australian Industry Participation Policy (SAIPP) and the supporting procedural and reporting requirements.

The SAIPP is the high-level framework for delivery of the South Australian Government's objectives including promoting capable businesses based in South Australia being given full, fair, and reasonable opportunity to participate in government contracts.

You are required to complete an IPP Plan as specified in the Invitation Summary. The IPP and supporting information, including the IPP template that can be completed and submitted online is available at: <https://industryadvocate.sa.gov.au/policy-and-resources/>

The Office of the Industry Advocate (OIA) is available to help You understand how this policy may apply to Your Response and can also help You to prepare any required SAIPP documentation. Contact details for the OIA are:

Office of the Industry Advocate
Level 17 Wakefield House
30 Wakefield Street
ADELAIDE SA 5000
Tel: (08) 8226 8956
Email: oia@sa.gov.au

1.7 Glossary

In this Invitation, unless the contrary intention is apparent:

- a) "Closing Date and Time" means the date and time by which Responses are required to be lodged
- c) "Contact Person" means the person authorised by the Public Authority to communicate with Suppliers about the EOI Process
- d) "EOI Process" means the process commenced by the issuing of this Invitation and concluding upon the award of a contract (or other outcome as determined by the Public Authority) or upon the earlier termination of the process
- e) "Evaluation" means the process for considering and evaluating Responses
- f) "Intellectual Property" means any patent, copyright, trademark, trade name, design, trade secret, knowhow, semi-conductor, circuit layout, or other form of intellectual property and the right to registration and renewal of the intellectual property
- g) "Invitation" means this document inviting persons to lodge a Response
- i) "Last Queries Date" means the date and time nominated in the Invitation Summary as the last date for Suppliers to seek information or clarification of any matters relating to this Invitation
- l) "Public Authority" means the agency of the State Government of South Australia conducting the EOI Process
- m) "Public Authority's Requirement" means the requirements specified in the Invitation, the Specification, and the contract
- n) "Response" means the documents constituting a Response lodged by a Supplier to meet the Public Authority's Requirement in accordance with this Invitation
- o) "Response Material" means all documents, data, computer programs, computer discs and other materials and things provided by a Supplier in relation to a Response arising out of this Invitation
- p) "South Australian Time" means the time applicable to South Australia, as defined at <http://www.australia.gov/about-australia/our-country/time>
- r) "Supplier" or "You" or "Your" means any person or organization responding to this Invitation by lodging a Response.