

DPTI CONDITIONS OF SUBMISSION FOR A REQUEST FOR PROPOSAL

1. REQUEST FOR PROPOSAL DOCUMENTS

The Request for Proposal (RfP) documents comprise of the documents listed in the contents page of this document. This RfP document supersedes any other documentation that may have been previously available in relation to this project.

Any Departmental publications referred to in these documents are available from the internet at:

https://dit.sa.gov.au/contractor_documents

No explanation or amendment to the RfP documents shall be recognised unless in the form of a written amendment thereto issued by the Department. The Department may amend the RfP documents at any time prior to the closing date. The Proponents must be registered at the SA Tenders and Contracts website: <https://www.tenders.sa.gov.au/tenders/index.do>. Telephone (08) 8462 1401 for further information.

2. PROPONENT'S WARRANTIES AND OBLIGATIONS

These Conditions for Submission prescribe the rules for the conduct of the RfP process. By submitting a response, a Proponent agrees to comply with, and be bound by, the rules contained within these Conditions for Submission. If a Proponent acts contrary to these rules, the Department reserves the right to terminate consideration of their submission, but is under no obligation to do so. A reference to a Proponent in these conditions includes its employees, agents and subcontractors.

Except for any express statement contained in the RfP documents, a Proponent warrants that in lodging its response it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of the Department, its officers, employees, agents or advisers. A Proponent cannot rely upon any document designated as "For Information Only".

This RfP is not an offer. These Conditions for Submission will not form part of any Contract.

Prior to submitting a response, a Proponent is deemed to have:

- a) examined all documentation (either written, electronic or information made available through a Departmental internet site) made available by the Department to the Proponents for the purpose of submitting a response;
- b) examined all information relevant to the risks, contingencies and other circumstances having an effect on the RfP and obtainable by the making of reasonable enquiries; and
- c) where applicable, inspected the site and its near surrounds.

3. CLARIFICATION

Proponents may seek clarification of any matters relating to this RfP by directing written enquiries to the Contact Officer(s) nominated on the cover of this RfP document. Proponents shall not rely on communication with any other person(s) with regard to the RfP process.

It is the responsibility of the Proponent to request any clarifications or additional information arising from analysis of this RfP. The Departmental Contact Officer may stipulate that any request for clarification or additional information arising from analysis of this document be forwarded in writing. Where it is appropriate for the Department to provide a written reply to any enquiry, and the matter is not considered by the Department to be commercially sensitive or designated by the Proponent as commercial in confidence, a clarification may be sent to all Proponents.

4. CONSORTIUM RESPONSES

The Proponent shall provide a description of the proposed legal structure and the relationships that are proposed between Proponent Members.

Proponents shall nominate one person as the preferred contact person on behalf of all Proponent Members.

Notwithstanding any undertaking regarding confidentiality, by submitting an RfP Response, the Proponent agrees that the Department may forward information relating to the Proponent or the RfP Response to the Australian Competition and Consumer Commission (ACCC) if the Department reasonably suspects, or is notified by the

ACCC that it reasonably suspects, that there is cartel conduct or unlawful collusion in relation to this RfP process (whether or not the suspicion relates to the Proponent).

5. FORM OF SUBMISSION

If the RfP Response is to be submitted electronically, it is recommended that the submission is uploaded at least two hours before the specified closing time.

If problems are encountered with uploading the submission to the SA Tenders and Contracts web site, the Proponent should contact the SA Tenders and Contracts Helpdesk on (08) 8462 1401 as soon as possible and in any case, prior to the specified closing time.

The Proponent's submission must comply with the following:

- a) all requirements specified in the part "Information to be Submitted" are included in the submission;
- b) the submission is lodged in accordance with the requirements stated on the cover page of this RfP document;
- c) all of the submission is in English, all prices are in Australian dollars and all measurements are in the metric (SI) system; and
- d) the submission includes a written acknowledgment of receipt of any amendments issued by the Department.

The time specified is the time applicable to South Australia, as defined at <https://www.australia.gov.au/time-zones-and-daylight-saving>. The Department reserves the right to extend the closing date or time.

In the event of receipt of a submission after the closing date and time, a determination regarding its acceptability will be made in accordance with the Department's policy for late tenders.

The Proponent's submission shall become the property of the Department.

6. PROBITY

The Proponent must:

- a) declare any actual or potential conflict of interest;
- b) prior to the completion of this procurement process, not seek to employ or engage the services of any person (including an advisor, consultant or employee) who has a duty to the Department in relation to this process;
- c) not collude with any potential Proponent;
- d) comply with all laws in force in South Australia applicable to the process, including the *Competition and Consumer Act 2010* (Cth);
- e) disclose whether acting as agent, nominee or jointly with another person and disclose the identity of the other person;
- f) not offer any incentive to, or otherwise attempt to influence, any employee of the Department or any member of an evaluation committee at any time;
- g) not make any news releases or responses to media enquiries and questions pertaining to this process without the Department's written approval; and
- h) not attempt to seek confidential information in respect of this proposal process from the Department's employees and others who have access to confidential information.

The Proponent must comply with:

- a) The "Code of Practice for the South Australian Building and Construction Industry" and its "Implementation Guidelines", available from: <http://www.bpims.sa.gov.au/bpims/login/home.jsp>; and
- b) AS 4120 "Code of Tendering".

7. ALTERNATIVE PROPOSALS¹

1. **An alternative proposal will not be considered unless a conforming proposal is offered.**
2. A conforming proposal is one that does not contain any departure from any part of the RfP including the Scope of Work, Specifications or Conditions of Contract.

For clarity, statements such as the following shall be treated as a departure:

- “Proposal complies except as stated otherwise”;
- “Except for minor items to be negotiated”;
- “Except detailed in the Proposal”;
- “We have allowed for”; or
- “We have assumed”.

Subject to submitting a conforming proposal, the Proponent may submit an Alternative Proposals.

3. An Alternative Proposal shall contain details of departures from any parts of the RfP, including the Scope of Work, Specifications and Conditions of Contract.
 - i. The Proponent shall be deemed to comply with the RfP in every respect except for the departures listed in a separate section of the proposal titled “*Departures from the RfP*” per the template at Schedule A.
 - ii. The departures shall be detailed in the same order as the proposal documents and relevant RfP clauses.
 - iii. Each departure shall include separate prices to enable the proposal to be adjusted to comply with the RfP. Where a price is not identified or a non-financial adjustment is provided, the Department will assume a ‘worst case scenario’ adjustment.
 - iv. Details of any technical, monetary or other advantage or disadvantage to the Department shall be given.
4. Where there is an inconsistency (other than those properly listed as departures from the RfP) between a provision of the RfP and a provision of the proposal (including supporting documentation), the provision of the RfP shall prevail. To the extent of the inconsistency, the provision of the proposal shall have no force or effect.
5. Adjustment to the proposal price will not be accepted for any item omitted from the list of departures.
6. The Department is not obliged to accept all or any of the Departures contained in Schedule A.
7. A non-conforming proposal, or portion thereof, if accepted, would be subject to all the other requirements of the Proposal Documents, apart from the nominated and accepted departures.
8. Any of the Proponent’s standard conditions of tendering, supply, Contract of Sale or other standard terms shall be excluded completely from forming part of the conforming proposal.

8. ASSESSMENT OF SUBMISSIONS AND NEGOTIATION

Submissions will be assessed in accordance with the criteria included in Part E “Information to be Submitted”.

At any time during the assessment process, the Department reserves the right to:

- a) seek clarification of any aspect of a submission;
- b) seek the advice and / or assistance of external consultants regarding the assessment of submissions; and
- c) make enquiries of any person, company or organisation to ascertain information regarding any Proponent and its submission.

For the purpose of assessment, the Proponent licences the Department to reproduce the whole or any portion of the submission despite any copyright or other intellectual property right that may subsist in the submission.

¹ Note: new paragraph inserted 1/11/17

The Department may require additional information to be submitted. This information shall be submitted within the time stated and will be considered as part of the submission. Failure to submit the information in the time requested may result in the submission being excluded from further consideration. Such additional information will not be accepted if it serves to vary the essence of the original submission.

The Department may engage in discussions or negotiations, as appropriate, with any Proponent for the purposes of clarifying its submission or rectifying minor omissions. The Department may request that a Proponent resubmits information in response to proposed changes to any of the RfP documents.

The Proponent is advised that obligations outlined within the Procurement Services South Australia "International Obligations Guideline" applies to this RfP process. Refer <https://www.procurement.sa.gov.au/guidelines2/International-Obligations-Guideline.pdf>

In determining the identity of Proponents to be shortlisted, the Department may take into account the relationship between Proponents (including common directorships and common ownerships) to ensure that there is competition between the Proponents. In the event that a Proponent contains a related body corporate (as defined in the *Corporations Act 2001* (Cth)) of another Proponent, the Department reserves the right to only shortlist the highest ranking Proponent.

9. VALIDITY PERIOD

The Proponent warrants that it will maintain the validity of its submission for a period of 120 days from date of submission. Where the Department seeks an extension of this period, a request in writing will be forwarded to the Proponent. The failure of a Proponent to respond to this request may result in its proposal being excluded from further consideration.

10. SUBMISSION

The Proponent agrees and acknowledges that the Department, in its absolute discretion:

- a) is not obliged to accept any submission;
- b) may reject any submission at any time; or
- c) may abandon this expression of interest process at any time.

Nothing in this RfP document or the subsequent evaluation process is to be construed as creating a binding contract (express or implied) between the Department and any Proponent.

Notification to a Proponent that it is a shortlisted Proponent will not constitute an acceptance of the submission.

No representation made by or on behalf of the Department in relation to this RfP (or its subject matter) will be binding on the Department unless that representation is expressly incorporated into the contract ultimately entered into between the Department and the successful Proponent.

11. CONFIDENTIALITY

The Proponent and the Department may disclose information to any consultant or subcontractor engaged for the purpose of this process if the consultant is required to preserve the confidentiality of that information.

Information supplied by or on behalf of the Department after the date of close of submissions is confidential and the Proponent is obliged to maintain its confidentiality, unless indicated otherwise.

The Department understands the need to keep commercial matters confidential in appropriate circumstances (including information submitted at the request of the Department after the date of close of submissions), but reserves the right to disclose some or all of the contents of a submission:

- a) if required to do so by a constitutional convention;
- b) in order that the relevant Minister may discharge their duties and obligations to Parliament and the South Australian Government;
- c) to the Australian Competition and Consumer Commission (ACCC) or any other government authority having relevant jurisdiction, if the Department reasonably suspects or is notified by the ACCC that it reasonably suspects, that there is cartel conduct or unlawful collusion in relation to this process (whether or not the suspicion relates to the Proponent); and
- d) as required by law.

Any condition in a bid that purports to prohibit or restrict the Department's right to make such disclosures cannot be accepted.

12. COPYRIGHT

The Proponent licences the Department to reproduce, for the purposes of any assessment process, the whole or any portion of the submission despite any copyright or other intellectual property right that may subsist in the submission.

Ownership in the documentation submitted by the Proponent will be transferred to the Department.

13. COST OF PREPARATION OF BIDS

Proponents are responsible for the cost of preparing and submitting an RfP Response and all other costs arising out of the process, which includes any subsequent contract negotiation phase prior to the award of a contract.

14. EMPLOYMENT OF EX-GOVERNMENT EMPLOYEES

The Department will not accept the services of any former public sector employee, either directly or through a third party, who has received a separation package from the Government, for a period coinciding with the number of weeks of the payment to them as part of the package, from the effective date of the termination of their employment by resignation, where such engagement may breach the conditions under which the separation package was paid to the former public sector employee.

15. DISCLOSURE OF GOVERNMENT CONTRACTS

Proponents are to be aware that if a contract is entered into, the Department may disclose that contract and/or information in relation to it in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request.

The Proponent agrees that if it is successful, the contract may be disclosed on the South Australian Government's Contracts website <http://www.tenders.sa.gov.au> in accordance with Premier and Cabinet Circular 27 (PC027), a copy of which is available from [here](#).

16. STATE FEDERAL COOPERATION ON TRADE PRACTICES MATTERS

If a Proponent is shortlisted and subsequently invited to submit a proposal, the Proponent will be required to submit a signed declaration that:

- a) confirms that the proposal is independent and that there has not been any unlawful collusion with any other Proponent or party in connection with the request for tender process; and
- b) clearly indicates the total value of the goods and/or services to be provided by sub-contractors, and where that value exceeds either of \$1,000,000 (GST inc.) or 25% of the total value of the proposal, the declaration must include a complete list of all sub-contractors, the value, and the nature of the work to be provided under each sub-contract.

17. PROBITY ADVISOR

The Proponent acknowledges that the Department may engage a probity advisor to provide advice on this Project.

18. SOUTH AUSTRALIAN INDUSTRY PARTICIPATION POLICY

The South Australian Industry Participation Policy ("IPP") is the high-level framework for delivery of the South Australian Government's objectives including:

1. promoting capable businesses based in South Australia being given full, fair and reasonable opportunity to participate in government contracts; and

2. meeting the requirements of the South Australian Industry Participation Policy, Procedural Guidelines, including the requirements attached to Tailored Industry Participation Plans for projects valued over \$50million, by achieving critical training and employment outcomes.

Information regarding the SA Industry Participation Policy can be found at

<https://www.industryadvocate.sa.gov.au/policy-and-resources>

This project will fall within the scope of the IPP. As a condition precedent to the State considering a Proposal, the Proponent must submit:

- (a) a Standard IPP Plan (as defined on the website) where the project is valued between \$550 000 and \$50 million; or
- (b) a Tailored IPP Plan (as defined on the website) where the project is valued over \$50 million.

The IPP website contains a link to the template Standard IPP Plan that must be submitted.

For information or assistance regarding the completion of the IPP Plan, please contact:

Office of the Industry Advocate

Level 170, 30 Wakefield Street

ADELAIDE SA 5000

Tel: (08) 8226 8956

Email: oya@sa.gov.au

Web: <https://www.industryadvocate.sa.gov.au/>

19. BUILDING AND CONSTRUCTION WHS ACCREDITATION SCHEME

This clause only applies if specified in the RfP documents. A successful Proponent must be accredited under the Australian Government Building and Construction WHS Accreditation Scheme (the Scheme) established by the Building and Construction Industry Improvement Act 2005 (BCII Act) when entering into contracts for building work as defined under section 6 of the Federal Safety Commissioner Act 2022 and maintain accreditation under that Scheme while the building work is being carried out.

A successful Proponent must comply with all conditions of Scheme accreditation.

20. CHANGES TO PERSONNEL

The persons nominated in the Submission are key personnel ('Key Personnel'). The Proponent must include each of the Key Personnel in its final proposal / tender and in the role originally proposed, except where a change is made in accordance with the following:

- a) In the event that the Proponent seeks to change any of the Key Personnel from that submitted in its RfP Response, the Proponent must promptly seek the Department's approval of the proposed change and provide the Department with sufficient details of the proposed change so as to facilitate the Department's consideration thereof. The Department may in its sole discretion accept, reject or seek additional information regarding a Proponent's request.
- b) In submitting its RfP Response the Proponent acknowledges and accepts that the above obligation endures throughout the Procurement Process until after the submission of its Final Proposal. Thereafter, changes to key personnel are subject to the terms of the Design and Construct Contract.

21. CHANGES TO PROPONENTS

If a Proponent participants change after the closing time for submissions, the affected Proponent must immediately notify the Department of this change in writing. If the Department, in its absolute discretion, determines that this change is material, it reserves the right to re-evaluate the Submission or to eliminate the Proponent from further participation in the evaluation process. Proponents should (as a minimum) notify the Department of any change to any of the following entities or individuals occurring after the closing time for submissions:

- a) any entity that proposes to take a direct equity interest in the Proponent or a participant if the Proponent is short-listed or becomes the Contractor;
- b) the ultimate parent entity of any entity that proposes to take a direct equity interest of the type mentioned in the paragraph above;
- c) any other entity that is likely to be in a position to exercise control or influence (direct or indirect) over the future management and operation of the Proponent or a participant;
- d) any director, secretary or chief executive of any entity falling within the above paragraphs and any proposed new director, secretary or chief executive officer; and
- e) any key Project resources identified by the Proponents as providing a core capability to the Proponent.

22. COMPLAINTS

If at any time during the RfP process, the Proponent considers that it has been unfairly treated, the Proponent must first notify the Department's Contact Person in writing. If the matter is not resolved, the Proponent may then contact the Department's nominated procurement complaints officer below, and request in writing for the issue to be dealt with in accordance with the Department's complaint management process.

Title: Manager, Financial & Procurement, Contracts,
Governance & Policy
Address: 83 Pirie Street, Adelaide, 5000
Email: DIT.TenderSupplierComplaints@sa.gov.au
Phone: (08) 8343 2671

23. SUPPLIER FEEDBACK

If the Proponent accessed the tender opportunity via the SA Tenders and Contracts website, in addition to feedback the Proponent may wish to provide directly to the issuing agency, the Proponent can also provide anonymous feedback using the survey tool on the website: <https://www.tenders.sa.gov.au/tenders/index.do>

The Proponent's feedback may be provided, either:

- a) after the Proponent has downloaded the RfP documentation but decided not to respond; or
- b) at the end of the process following tender award, debrief or contract execution (as applicable).

If using the survey for the first time, additional information about the Supplier Feedback initiative is included on the SA Tenders website. Otherwise, the Proponent can gain direct access the survey here: https://www.surveymonkey.com/s/SPB_Supplier_Feedback

24. CONFLICT OF INTEREST³

The Proponent warrants that at the time of submitting its submission, it is not aware of any matters which could give rise to a real or perceived conflict of interest, except for any such matters disclosed within its submission. The Proponent must disclose in its tender any matter which could give rise to a real or perceived conflict of interest during the tender process or during performance of the contract. In the event such a matter is disclosed, the Proponent must also detail how it proposes to avoid or manage the conflict. If the Proponent fails to disclose such a matter which a reasonable tenderer in its position should have been aware of, or its disclosure of such a matter is inaccurate or incomplete, then regardless of any subsequent dealings the Department may:

- a) terminate negotiations with the Proponent;
- b) terminate consideration of the Proponent's submission; or
- c) terminate any contract between the Proponent and the Department in relation to the RfT or the underlying project,

without any obligation on the Department to make any payment to the Proponent.

³ Note: new paragraph inserted 1/10/17

SCHEDULE A
DEPARTURES FROM THE RFP

Item	Document	Reference	Heading	Departure	Explanation	Technical, monetary or other advantage or disadvantage	Price impact of departure to Conforming Tender Sum
1 (example)	Conditions of Contract	Clause 34.3	Claims	The Contractor shall provide notice immediately within 5 working days ...	The company may not be in a position to provide notice immediately.		-\$50000.00
2							
3							
Total Cost of Compliance							\$ [INSERT]

Proponent's Declaration [DELETE ONE]

A. The Proponent has submitted a confirming tender in accordance with the Conditions of Submission for Request for Proposal.

[OR]

A. The Proponent has submitted a confirming proposal in accordance with the Conditions of Submission for Request for Proposal.

B. The Proponent has also submitted an Alternative Proposal.

C. The Alternative Proposal complies with the RFP in every respect except for the departures listed above and any statement elsewhere in the proposal such as the following shall have no force or effect:

- Proposal complies except as stated otherwise;
- Except for minor items to be negotiated;
- Except detailed in the proposal.