**CONDITIONS FOR SUBMISSION OF AN APPLICATION**

**FOR A PANEL CONTRACT**

**CS 1 INVITATION DOCUMENTS**

The Invitation Documents comprise of the documents listed in the contents page of the invitation. The Department may amend the Invitation Documents at any time.

Any Departmental publications referred to in these documents are available from the internet at: <http://www.dpti.sa.gov.au/contractor_documents>.

**CS 2 APPLICANT’S WARRANTIES AND OBLIGATIONS**

These Conditions of Submission prescribe the rules for the conduct of the application process. By submitting an application, an Applicant agrees to comply with, and be bound by, the rules contained within these Conditions of Submission.

Except for any express statement contained in the Invitation Documents, the Applicant warrants that in lodging its application 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. An Applicant cannot rely upon any document designated as “For Information Only”.

This invitation is not an offer and these Conditions of Submission will not form part of any Contract.

Prior to submitting an application, an Applicant is deemed to have:

1. examined all written documentation made available by the Department to the Applicants for the purpose submitting an Application; and
2. examined all information relevant to the risks, contingencies and other circumstances having an effect on the application and obtainable by the making of reasonable enquiries.

**CS 3 ENQUIRIES**

Enquiries are to be submitted in accordance with the requirements specified on the cover sheet of the Invitation Document. Applicants cannot rely on communication with any other person(s) with regard to the application process.

It is the responsibility of the Applicant to request any clarifications or additional information arising from analysis of the Invitation Documents. The Departmental Contact Officer may stipulate that any request for clarification or additional information arising from analysis of this document be forwarded in writing.

**CS 4 CODE OF CONDUCT**

Applicants, their employees and agents shall:

1. at all times act with integrity;
2. declare any actual or potential conflict of interest;
3. not seek to employ or engage the services of any person who has a duty to the Department as an advisor, consultant or employee in relation to this process;
4. not collude or enter into any agreement with any other Applicant concerning the preparation of its application, pay any amount to an unsuccessful Applicant or seek to obtain knowledge of the price of any other application;
5. not attempt to influence the outcome of this process by offering gifts, employment or other benefits to SA Government employees or persons engaged by the Department and others who are in a position to influence the award of the contract;
6. not attempt to seek confidential information in respect of this application process from the SA Government employees and others who have access to confidential information; and
7. not make any news releases or responses to media enquiries and questions pertaining to this application process without the Department’s written approval.

**CS 5 SUBMISSION OF APPLICATIONS**

The Applicant’s submission must comply with the following:

1. the submission shall be lodged in accordance with the requirements stated on the cover sheet of this Invitation document;
2. all documents and schedules listed in CS Annexure A shall be included in the submission; and
3. hard copy documents shall be sealed in an envelope or package, marked confidential and clearly identified as a submission for this Panel Contract.

The Applicant’s submission shall become the property of the Department.

**CS 6 COSTS OF APPLICATION PREPARATION**

Applicants bear all costs that they incur in the application process, which includes any subsequent contract negotiation phase prior to the award of a contract.

**CS7[[1]](#footnote-1) ALTERNATIVE APPLICATIONS**

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

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

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

Subject to submitting a conforming application, the Applicant may submit an Alternative Applications.

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

**CS 8 APPLICATION ASSESSMENT AND NEGOTIATION**

Applications will be assessed in accordance with the Department’s evaluation procedures and the criteria listed in CS Annexure B "Assessment of Applications".

At any time prior to award of a contract, the Department reserves the right to:

1. seek clarification of any aspect of a application;
2. seek the advice and / or assistance of external consultants regarding the assessment of applications;
3. make enquiries of any person, company or organisation to ascertain information regarding any Applicant and its application; or
4. conduct an assessment of the financial viability of an Applicant.

If requested by the Department or a third party acting as agent of the Principal, selected Applicant(s) must provide additional written information regarding their application or their business, or attend an interview.

**CS 9 REPRESENTATIONS**

No representation made by or on behalf of the Department in relation to the Invitation Documents (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 a successful Applicant.

**CS 10 CONFIDENTIAL INFORMATION AND DISCLOSURE OF CONTRACT**

The Department will treat applications (including information submitted at the request of the Department after the date of close of applications) as confidential and will not disclose application contents, except:

1. as required by law;
2. to the Department’s agents and advisors for the sole purpose of application evaluation;
3. to the Australian Competition and Consumer Commission (or other government authority having relevant jurisdiction) if the Department reasonably suspects that there is cartel conduct in relation to this application process; and
4. where an Applicant is successful, in accordance with Premier and Cabinet Circular 27 (PCO27) on the South Australian Government’s Contracts website [http://www.tenders.sa.gov.au](http://www.tenders.sa.gov.au/)

The Applicant agrees to comply with PCO27, a copy of which is available from [PC 027 – DISCLOSURE OF GOVERNMENT CONTRACTS](https://www.dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars/PC-027-Disclosure-of-Government-Contracts.pdf)

The Applicant agrees that unless indicated otherwise, all information provided by the Department to the Applicant after the date of close of applications is confidential and the Applicant shall undertake to maintain such information as confidential.

**CS 11 APPLICATION VALIDITY PERIOD**

The Applicant warrants that it will maintain the validity of its application for a period of 90 days from date of submission of application.

**CS 12 ACCEPTANCE OF APPLICATION**

The Applicant agrees and acknowledges that the Department is under no obligation to accept the lowest or any application received. In its absolute discretion, the Department may reject any application at any time or abandon this application process.

Nothing in the Invitation Documents or any subsequent application assessment or negotiation process is to be construed as creating a binding contract (express or implied) between the Department and any Applicant. No legal relationship will exist between the Department and any Applicant unless and until the Department has delivered (either by post, courier, hand delivery or facsimile) a written notice of acceptance of application to the successful Applicant at the address stated on the application form.

**CS 13 CONFLICT OF INTEREST**

The Applicant warrants that at the time of submitting its application, 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 application.

The Applicant must disclose in its application 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 Applicant must also detail how it proposes to avoid or manage the conflict. If the Applicant fails to disclose such a matter which a reasonable Applicant 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:

1. terminate negotiations with the Applicant;
2. terminate consideration of the Applicant’s application; or
3. terminate any contract between the Applicant and the Department in relation to this Panel,

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

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**SCHEDULE A**

**DEPARTURES FROM THE INVITATION DOCUMENTS**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **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] |

**Applicant’s Declaration [DELETE ONE]**

1. The Applicant has submitted a confirming application in accordance with the Submission of an Application for a Panel Contract.

[OR]

1. The Applicant has submitted a confirming application in accordance with the Conditions of Submission of an Application for a Panel Contract.
2. The Applicant has also submitted an Alternative Application.
3. The Alternative Application complies with the Invitation Documents in every respect except for the departures listed above and any statement elsewhere in the application such as the following shall have no force or effect:

• Application complies except as stated otherwise;

• Except for minor items to be negotiated;

• Except detailed in the application.

1. Note: new paragraph 1/11/17 [↑](#footnote-ref-1)