

Part 2 – Conditions of Tender

**Request for Tender
(RFT)**

**Operation of the Roma Airport Café
(Management Agreement)**

Closing Time:

**10 am
(Australian Eastern Standard Time)
28 February 2022**

RFT Number:

22040

Conditions of Tender

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Items in blue in this section are where suppliers have previously raised complaints with Council; or we are fixing known problem areas - learning from recent years' contractual experiences.



1. DEFINITIONS

1.1 In these Conditions of Tender, except where the context otherwise requires:

'Alternative Tender' means an offer to perform the work described in the Request for Tender on a substantially different basis to that required by the Request for Tender and includes:

- (a) a Tender that is not fully compliant with the Specifications; or
- (b) a Tender which contains material departures from the Lease.

"Closing Time" means the time and date set out in the Invitation to Tender & Information for Tenderers.

"Conditions of Tender" means this document.

"Confidential Information" means any technical, commercial or other information, ideas, concepts, know-how, data, drawings, specifications or designs of any kind:

- (a) owned by Council and supplied or made available by Council to the Tenderer; or
- (b) created by the Tenderer, from the material supplied or made available to the Tenderer by Council for the purposes of submitting the Tender.

'Conforming Tender' means a Tender described in clause 6.4.

"Contractor" means the party or parties engaged by the Council as a result of this tender process;

"Council" means Maranoa Regional Council;

"GST" means Goods and Services tax imposed by or through the A New Tax System (Goods and Services Tax) Act 1999;

"Local Government" means a local government for a local government area declared by regulation under the *Local Government Act 2009*.

'Non-Conforming Tender' means any Tender that is not a Conforming Tender and includes an Alternative Tender.

"Relevant Person" means the Tenderer and each person engaged in the preparation of a Tender on behalf of the Tenderer.

"Request for Tender" or **"RFT"** documents are described in Clause 2.1.

"RTI Act" means the *Right to Information Act 2009*.

"Specification" means the detailed description of the good or service comprising Part 3 of the Request for Tender, including any amendment or addition to the Specification.

"Tender" means a response lodged in Part 4 in compliance with the following documents:

- (a) Part 1 – Invitation to Tender & Information for Tenderers;
- (b) Part 2 – Conditions of Tender;
- (c) Part 3 – Specification;
- (d) Part 4 – Tender Response (including Statement of Departures); and
- (e) Part 5 – Draft Lease.

"Tenderer" means any person lodging a Tender.

"Tender Response" means the Tender Response comprising Part 4 of the Request for Tender, including any templates or attachments to be completed and included in a Tender.

2. STRUCTURE OF REQUEST FOR TENDER

- 2.1 The documents comprising the Request for Tender are, collectively:
- (a) Part 1 – Invitation to Tender and Information for Tenderers (read and keep);
 - (b) Part 2 – Conditions of Tender (read and keep);
 - (c) Part 3 – Specification (read and keep);
 - (d) Part 4 – Tender Response (complete and return); and
 - (e) Part 5 – Draft Lease (kiosk) (read & keep – copy will be prepared for signature for the successful Tenderer)

- 2.2 All parts of the Request for Tender must be read and considered together so that all parts are as far as possible consistent. Where there is an inconsistency, ambiguity or discrepancy in the documents, the documents should be read and considered in the order of priority from document (a) to (e) as follows:
- (a) Part 5 – Draft Lease;
 - (b) Part 2 – Conditions of Tender;
 - (c) Part 3 – Specification;
 - (d) Part 1 – Invitation to Tender & Information for Tenderers; and
 - (e) Part 4 – Tender Response.

- 2.3 This Request for Tender invites Tenderers to lodge a Tender with Council **by the Closing Time** in accordance with Part 1 – Invitation to Tender & Information for Tenderers.

- 2.4 Council makes no representation of any nature (whether express or implied) that any Tenderer will be engaged to provide goods and services as a result of this tender.
- 2.5 No contract or other arrangement or agreement is formed between Council and a Tenderer to carry out any work as a result of this Request for Tender.

3. OBTAINING INFORMATION

- 3.1 Council will provide the Tenderer with the Request for Tender. No fee is payable for the supply of the Request for Tender.
- 3.2 Any additional information required by a Tenderer may be obtained from Council by using the forum facility on Vendorpanel.

- 3.3 Tenderers must not direct requests for information to, or seek to discuss the Request for Tender process with, any Councillor, Officer of Council or another party representing or purporting to represent Council, other than through the forum facility on Vendorpanel.

- 3.4 Council will not be bound by any verbal advice or information furnished by a Councillor, officer of Council or another party representing or purporting to represent Council, with respect to the Request for Tender or Request for Tender process, other than written advice or information furnished by Council through the forum facility on Vendorpanel.
- 3.5 Notwithstanding clause 3.4, any advice or information provided to the Tenderer by or on behalf of Council:
- (a) will be provided for the convenience of the Tenderer only and, unless expressly incorporated into the Lease, will not form part of the agreement with Council; and
 - (a) is not warranted or represented by Council as accurate, correct or adequate.
- 3.6 Council may at any time, make any advice or the information available to any or all Tenderers. Without limiting clause 3.6, Council will not make advice or information available to all Tenderers in circumstances where it would result in a disclosure of a Tenderer's confidential or commercial-in-confidence information.

- 3.7 If requested by Council, the Tenderer must:
- (a) provide further information relating to the Tender;
 - (b) give a presentation at a time and place nominated by Council:
 - i. to demonstrate the Tenderer's financial viability, technical capabilities and resources;
 - ii. to demonstrate its ability to comply with the terms and conditions of the Tender and subsequent Lease; and
 - iii. in relation to anything else relative to the Tender.
 - (c) allow Council and its agents to inspect any facility or equipment the Tenderer proposes to use in complying with the terms and conditions of the Tender and subsequent Lease;
 - (d) authorise Council and its agents (in writing, if required) to contact any referee nominated by the Tenderer; and
 - (e) authorise Council (in writing, if required) to obtain information about the Tenderer, particularly information relevant to the Tenderer's ability to discharge the responsibilities of the Contractor under the Tender and subsequent Lease, from any third party Council considers may be able to provide that information.
- 3.8 Council will provide information to Tenderers in electronic format, using the forum facility on Vendorpanel.

4. RESPONSIBILITIES OF TENDERER

- 4.1 Before submitting its Tender, each Tenderer must:
- (a) carefully read and consider the Request for Tender and any other information made available by Council with respect to the Request for Tender and the Request for Tender process;
 - (b) read and consider all information relevant to the risks, contingencies and other circumstances relevant to the Request for Tender; and
 - (c) inform itself of the nature of the obligations it must discharge under the Request for Tender and subsequent Lease;
 - (d) inform itself of the labour, plant and equipment and other items necessary, suitable or desirable to enable the Tenderer to discharge its obligations under the Tender and subsequent Lease;
 - (e) not rely upon information provided by or on behalf of Council;
 - (f) independently verify any information provided by or on behalf of Council, and satisfy itself that the information is adequate and accurate;
 - (g) satisfy itself that the information in its Tender is accurate and complete; and
 - (h) satisfy itself that its Tender complies in all respects with the requirements of the Request for Tender.
- 4.2 In evaluating Tenders and determining with whom it will enter into an agreement (via Lease), Council will rely upon Tenderers having complied with the requirements of Clause 4.1.

4.3 Failure to comply with any requirement in Clause 4.1 will not relieve the relevant Tenderer of responsibility to fulfil the Tender Specifications and subsequent Lease in accordance with its terms, and in particular, the price or rate tendered by the Tenderer.

- 4.4 Council will not be liable for any expenses or losses incurred by the Tenderer in:
- (a) attending site inspection;
 - (b) preparing and lodging its Tender;

- (c) participating in any post Tender activities;
- (d) in connection with the Request for Tender or the Request for Tender process (including but not limited to the exercise of a right by Council in accordance with the Request for Tender or otherwise).

- 4.5 A Tender will not be considered if the Tenderer or anybody on its behalf offers or gives anything to:
- a) any Councillor of Council; or
 - b) any officer or agent of Council, or their associate, partner or family members as an inducement or reward that could influence the actions of the person in relation to the Tender.

5. FORMAL REQUIREMENTS

- 5.1 Tenderers are required to submit their Tender electronically, and upload their response documents using Vendopanel (www.vendorpanel.com.au). All files, including attachments, should be saved into one folder and labelled with the company name.
- 5.2 The Tender Response must be fully completed, and include all supporting documents and materials required by both the Conditions of Tender and the Tender Response.
- 5.3 The Tender Response must be duly executed in a manner that binds the Tenderer.
- 5.4 The Contract Price in the Tender Response must be:
- (a) in Australian dollars; and
 - (b) unless otherwise specified in the Tender Response, GST inclusive.
- 5.5 The identity of the Tenderer is fundamental to Council. For the purposes of a Tenderer's Tender, the Tenderer is the person, persons, corporation or corporations:
- (a) who is named as the Tenderer in the Tender Response; and
 - (b) who has duly executed the Tender Response in a manner that binds the Tenderer.
- 5.6 If the Tenderer is a trustee, it must provide a copy of its trust deed for Council's review in order for Council to determine whether the allocation of liability under the trust deed may have the potential to adversely affect Council's rights of recovery under the Contract.

6. CONFORMING AND NON-CONFORMING TENDERS

- 6.1 A Tenderer may lodge an Alternative Tender only if it has lodged a Conforming Tender.
- 6.2 Each Alternative Tender must be accompanied by a clear summary of all points of difference between the Alternative Tender and the Conforming Tender.
- 6.3 Each Alternative Tender must be submitted on a separate Tender Response.
- 6.4 A Tender is a Conforming Tender if the Tender complies with the requirements of the Request for Tender, and at a minimum, includes a Tender that is fully compliant with the Specification and that materially complies with the Lease.
- 6.5 If more than one Conforming Tender is lodged, each Tender must be accompanied by a clear summary of all points of difference between each Conforming Tender.
- 6.6 Council may, in its absolute discretion, determine if a Tender is a Conforming Tender.
- 6.7 Council may, but will not be obliged to, consider or accept a Non-Conforming Tender.

7. LODGEMENT OF TENDER

- 7.1 "Part 1 – Invitation to Tender and Information for Tenderers" details the Closing Time for tenders and that tenders must be lodged using the Vendorpanel website.

Late tenders will not be accepted (including not proceeding through the evaluation process), unless Council, in its absolute discretion, is satisfied that there is evidence that the Tender upload commenced prior to the Closing Time, or the Vendorpanel website was not operational, or the delay was due to another matter not caused by the Tenderer.

- 7.2 Council may extend the Closing Time at its discretion.
- 7.3 A Tender will not be accepted if it is submitted only:
- (a) by email;
 - (b) by facsimile; or
 - (c) in hard copy.
- 7.4 A Tenderer must not alter or add to the Tender Response unless required by the Conditions of Tender.
- 7.5 A Tender is irrevocable for 90 days after the Closing Time.
- 7.6 The period in Clause 7.5 may be extended by mutual agreement between the Tenderer and Council.

7.7 Each Tender Response constitutes an irrevocable offer by the Tenderer to Council to supply the Services required and otherwise to satisfy the requirements of the Specification on the terms and conditions of the Tender and subsequent Lease.

8. OPENING OF TENDERS

8.1 Tenders will be opened after the Closing Time.

8.2 Tenders will not be opened publicly for the following reasons:

- a) the price may not be an accurate indicator to the market, as the Tender may be subsequently assessed as incomplete or non-compliant;
- b) some of the material may be considered commercial-in-confidence by Tenderers;
- c) local governments no longer make decisions based on price alone – rather value for money and consideration of a range of criteria including whole-of-life-cost.

9. TENDER EVALUATION PROCESS

9.1 Tenders will be evaluated by reference to the sound contracting principles in section 104 (3) of the *Local Government Act 2009*, namely:

- (a) value for money;
- (b) open and effective competition;
- (c) the development of competitive local business and industry;
- (d) environmental protection; and
- (e) ethical behaviour and fair dealing,

within the framework of Council's Procurement Policy, and the compliance and qualitative criteria (refer to clause 9.5).

9.2 Each Tender will be evaluated in accordance with this clause 9 and using the information provided in the Tender Response.

9.3 In evaluating Tenders, Council may:

- (a) require presentations from Tenderers;
- (b) conduct interviews with Tenderer's staff and subcontractors;
- (c) contact Tenderers' referees;
- (d) investigate a Tenderer's structure and management, and that of any relevant subsidiary or related corporation;

- (e) make its own assessment of the Tenderer's ability to comply with the terms and conditions of the Tender and subsequent Lease at the tendered price; and
 - (f) verify that the Tenderer holds all necessary permits, licences, approvals and certifications necessary to enable it lawfully to comply with the terms and conditions of the Tender and subsequent Lease.
- 9.4 Tenderers must give the members of the evaluation panel of Council any cooperation and assistance reasonably requested of them to facilitate consideration of their Tenders.

9.5 It is important that Tenderers address all requirements within the Tender Response. **Incomplete Tenders, at Council's absolute discretion, may be rejected (including not proceeding through the evaluation process)** as there may be insufficient information for Council to make an informed evaluation and decision.

Evaluation criteria for the Request for Tender are specified in the Tender Response. The criteria may be weighted (**points** assigned) to indicate the relative **degree of importance** that Council places on the technical aspects of the supply of the Services. Each Tenderer must address each of the criteria specified in the Tender Response. If a Tenderer fails to address any of the criteria in the Tender Response, the Tender may be rejected by Council at its absolute discretion.

Compliance requirement (a Tender Checklist) for the Request for Tender are specified in Item 6 of the Tender Response. Each Tender will be assessed on a Yes/No basis as to whether each of the compliance criterion is satisfied by the Tenderer or not. If a Tender Response is assessed as "No" in respect of a criterion, the Tender may, at Council's absolute discretion, be rejected.

- 9.6 As part of its requirement to have regard to the development of competitive local business and industry, Council may in addition to any published evaluation criteria, have regard to a Tenderer's association with the Maranoa region. This may include (but is not limited to) a consideration of whether the Tenderer is domiciled in the Maranoa Regional Council area, the level of employment opportunities and economic growth benefits to the Maranoa Regional Council area. Council may in its discretion apply a weighting for such factors as part of its evaluation of a Tender.
- 9.7 Without limitation to Council's rights under any other provision of these Conditions of Tender, Council may change any evaluation criteria set out or referred to in this clause 9 without any obligation to notify Tenderers of such change.

10. CLARIFICATIONS AND VARIATIONS

- 10.1 Council may issue to any or all Tenderers before the Closing Time:
- (a) additional information; and
 - (b) information clarifying or correcting information previously provided, to assist them in preparing their Tenders.
- 10.2 If Council issues information to Tenderers under Clause 10.1, each Tenderer must take the information into account in the preparation of its Tender.

10.3 A prospective Tenderer may submit a written request for clarification of any part of the Tender documents prior to lodgement of their response, using the on-line Tender forum on the Tender details page of the Vendorpanel website (www.vendorpanel.com.au).

- 10.4 Council will not be bound by any verbal advice given or information furnished by an officer or Councillor of Maranoa Regional Council or another party representing or purporting to represent Council, other than written advice or information furnished by Council through the forum facility on Vendorpanel.

- 10.5 Where Council's response to the request for clarification alters the meaning or interpretation of the Tender, such response shall be recorded and distributed to all parties who have properly and duly obtained official Tender documents. Council shall not disclose the identity of the Tenderer who originally requested the information to any of the other Tenderers.
- 10.6 If any Tenderer has any doubt as to the meaning of any portion of the Tender documents, the Tenderer must include a 'Statement of Interpretation' upon which the Tenderer relies and on the basis of which the Tender Response has been prepared.
- 10.7 This Statement of Interpretation, any addendums and clarification questions and answers shall be included by the Tenderer with the Tender Response.
- 10.8 After the Closing Time, Council may do any one or more of the following (without limiting its options):
- (a) request clarification or further information from any Tenderer;
 - (b) provide additional information to any or all Tenderers;
 - (c) invite all Tenderers or a Tenderer to change their Tenders in response to any change in the connection with the Request for Tender process, including but not limited to an alteration to the Specification or any of the terms and conditions of the Lease; and
 - (d) negotiate with one or more Tenderers upon any aspect of their Tenders, including in relation to the Tenderer's rates or prices.

11. COMMISSIONS AND INCENTIVES

- 11.1 A Tender will not be considered if anybody offers or gives anything to a Councillor of Council, or any officer or agent of Council or their associate, partner or immediate family members, as an inducement for the purpose of seeking to influence the manner in which the Tender is evaluated or the Contract awarded.

12. CONFIDENTIALITY

- 12.1 The Tenderer:
- a) Acknowledges that the Confidential Information is sensitive and valuable, and will remain at all times the property of Council;
 - b) must not use the Confidential Information for any purpose other than preparing its Tender;
 - c) must not copy any material comprising or containing Confidential Information, other than where (and then only to the extent that) copying is necessary to enable it to prepare its Tender;
 - d) must allow access to the Confidential Information by Relevant Persons only to the extent necessary to enable the Tender to be prepared; and
 - e) must obtain Council's written consent before disclosing Confidential Information to a person other than a Relevant Person.
- 12.2 The consent of Council to disclosure of the Confidential Information by the Tenderer may be given or withheld on such terms and conditions as Council considers appropriate.
- 12.3 The Tenderer's obligation under this Clause 12 continues after closure of the Request for Tender process and execution of the Lease.
- 12.4 Council reserves the right to retrieve from a Relevant Person any Confidential Information held by that person, subject to Council having given written notice to the Tenderer in writing that the Relevant Person is to be denied access to the Confidential Information.
- 12.5 Failure or delay by Council in enforcing strict compliance with this Clause 12 or pursuing a remedy under this Clause 12 will not constitute a waiver or implied variation of the entitlement or remedy.

- 12.6 This Clause will not apply to an item of Confidential Information where the Tenderer can establish that:
- (a) the item has been transferred to the public domain through no fault of the Tenderer;
 - (b) the item was already in the Tenderer's possession when it was supplied or made available by Council, and not acquired directly or indirectly from Council; or
 - (c) it has received from Council written notification that Council no longer requires the Tenderer to keep the item confidential.

13. ACCEPTANCE OF TENDER

- 13.1 Unless otherwise stated in the Request for Tender, a Tender may be for all or part of the requirements identified in the Specification.
- 13.2 Council reserves the right to:
- (a) request clarification or additional information from any Tenderer;
 - (b) provide additional information to any or all Tenderers;
 - (c) proceed to negotiate or enter into discussions with any or all Tenderers, including but not limited to the Tenderer's rates or prices;
 - (d) discontinue negotiations with any Tenderer;
 - (e) accept or reject any Tender or all Tenders;
 - (f) abandon the Request for Tender process; and
 - (g) do any other act or thing that it sees fit in relation to the Request for Tender process.
- 13.3 Council is not obliged to reissue the Tender, or in any other way provide an opportunity to any Tenderer to amend or re-submit its Tender, irrespective of:
- (a) any Tender submitted by any Tenderer;
 - (b) any matter arising out of the post Tender discussions and negotiations with the preferred Tenderers.
- 13.4 A Tender is not accepted by Council until the Lease is executed by Council.

14. RIGHT TO INFORMATION AND DISCLOSURE

- 14.1 The *Right to Information Act 2009* (RTI Act) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including Local Governments).
- 14.2 The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or, on balance, disclosure is contrary to the public interest.

14.3 Information contained in a Tender is potentially subject to disclosure to third parties. In the assessment of any disclosure required by Council pursuant to the RTI Act, the Tenderer accepts that any information provided in its Tender, including information marked as confidential, will be assessed for disclosure in accordance with the terms of the RTI Act.

- 14.4 Council cannot guarantee that any information provided by the Tenderer will be protected from disclosure under the RTI Act.
- 14.5 Council accepts no responsibility for the accuracy or adequacy of any information it provides to Tenderers concerning the content or effect of the RTI Act.

15. OWNERSHIP OF TENDERS

- 15.1 Each Tender Response (including all supporting documentation and materials submitted by a Tenderer as part of, or in support of, a Tender) becomes the property of Council on submission and will not be returned to the Tenderer.

- 15.2 However, the Tenderer shall retain copyright and other intellectual property rights in respect of the Tender except to the extent specified in the Deed of Agreement.
- 15.3 Council may reproduce the Tender for the purposes of evaluation.

16. POLICIES PARTICULAR TO COUNCIL

- 16.1 By submitted a tender, the Tenderer commits to compliance with Council's policies in relation to:
- a) Supplier Code of Conduct;
 - b) Quality, Safety & Environment Policies; and
 - c) Media

17. CONFLICT OF INTEREST

- 17.1 Tenderers must clearly identify in their Tender whether or not they have any actual, perceived or potential conflict in responding to this Request for Tender, and if so, the manner in which they intend to deal with that conflict.
- 17.2 If at any time an actual or potential conflict of interest arises for any Tenderer, that Tenderer must immediately notify Council in writing of that conflict of interest.
- 17.3 If a Tenderer notifies Council of an actual or potential conflict of interest or Council becomes aware of the existence of an actual or potential conflict of interest, Council may, in its absolute discretion:
- a) enter into discussions to seek to resolve such conflict of interest;
 - b) cease further consideration of and disregard the Tender lodged by the Tenderer; and/or
 - c) take any other action, as it consider appropriate.

18. COLLUSIVE BEHAVIOUR

- 18.1 Tenderers and their respective officers, employees, agents and advisers must not engage in any collusive behaviour, anti-competitive conduct or any other similar conduct that contravenes any laws with any other Tenderer or any other person in relation to the preparation or lodgement of a Tender.
- 18.2 In addition to any other remedies available under any law or any contract, Council reserves the right, in its absolute discretion, to immediately reject any Tender lodged by a Tenderer that engaged in any collusive behaviour, anti-competitive conduct or any other /similar conduct with any other Tenderer or any other person in relation to the preparation or lodgement of its Tender.

19. APPLICABLE LAW

- 19.1 The law applying in Queensland applies to this Request for Tender, and the Request for Tender process. Each Tenderer must comply with all relevant laws in preparing and lodging its Tender and taking part in this Request for Tender process.

20. UNETHICAL PRACTICES

- 20.1 Without limiting any other rights of Council, Council may in its sole and absolute discretion exclude from further evaluation, any Tenders involving businesses or persons that have been, or in Council's opinion have been, involved in illegal, unethical or undesirable conduct or practices at any time.