

**Part 2 – Conditions of EOI
(Read & Keep)**

Expression of Interest:	Commercial Tenancy Agreement for not-for-profit Community Groups, Studio 2, Roma Community Arts Centre.
Closing Time:	2 pm (Australian Eastern Standard Time) 30th June 2025
EOI Number:	25044



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1. DEFINITIONS

1.1 In these Conditions of Expression of Interest (EOI), except where the context otherwise requires:

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

- (a) a EOI that is not fully compliant with the Specifications; or
- (b) a EOI which contains material departures from the Contract Terms & Conditions.

"Closing Time" means the time and date set out in the Invitation to Respond & EOI Specification.

"Conditions of EOI" 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 Responder; or
- (b) created by the Responder, from the material supplied or made available to the Responder by Council for the purposes of submitting the EOI.

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

"Contractor" means the party or parties engaged by the Council as a result of this EOI 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 EOI' means any EOI that is not a Conforming EOI and includes an Alternative EOI.

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

"Request for EOI" 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 1 of the Request for EOI, including any amendment or addition to the Specification.

"EOI" means a response lodged in Part 2 in compliance with the following documents:

- (a) Part 1 – Invitation, Information and Specification for Responders;
- (b) Part 2 – Conditions of EOI; and
- (c) Part 3 – EOI Response.

"Responder" means any person lodging a EOI Response.

"EOI Response" means the EOI Response comprising Part 2 of the Request for EOI, including any templates or attachments to be completed and included in an EOI Response.

2. STRUCTURE OF REQUEST FOR EOI

2.1 The documents comprising the Request for EOI are, collectively:

- (a) Part 1 – Invitation, Information and Specification for Responders;
- (b) Part 2 – Conditions of EOI; and
- (c) Part 3 – EOI Response.

2.2 All parts of the Request for EOI 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 (c) as follows:

- (a) Part 3 – EOI Response;
- (b) Part 2 – Conditions of EOI; and
- (c) Part 1 – Invitation, Information and Specification for Responders.

2.3 This Request for EOI invites responders to lodge an EOI Response with Council **by the Closing Time** in accordance with Part 1 – Invitation to Respond & Information for Responders.

2.4 Council makes no representation of any nature (whether express or implied) that any responder will be engaged to provide goods and services as a result of this EOI.

2.5 No contract or other arrangement or agreement is formed between Council and a Responder to carry out any work as a result of this Request for EOI.

3. OBTAINING INFORMATION

3.1 Council will provide the Responders with the Request for EOI. No fee is payable for the supply of the Request for EOI.

3.2 Any additional information required by a Responder may be obtained from Council by using the forum facility on Vendorpanel.

3.3 Responders must not direct requests for information to or seek to discuss the Request for EOI 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 EOI or Request for EOI 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 responder by or on behalf of Council:

- (a) will be provided for the convenience of the Responder only and, unless expressly incorporated into the Contract, will not form part of the agreement with Council; and
- (b) 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 responders. Without limiting clause 3.6, Council will not make advice or information available to all Responders in circumstances where it would result in a disclosure of a Responder's confidential or commercial-in-confidence information.

3.7 If requested by Council, the Responder must:

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

3.8 Council will provide information to Responders in electronic format, using the forum facility on Vendorpanel.

4. RESPONSIBILITIES OF RESPONDERS

4.1 Before submitting its EOI, each Responder must:

- (a) carefully read and consider the Request for EOI and any other information made available by Council with respect to the Request for EOI and the Request for EOI process;
- (b) read and consider all information relevant to the risks, contingencies and other circumstances relevant to the Request for EOI; and
- (c) inform itself of the nature of the obligations it must discharge under the Request for EOI and subsequent Contract;

- (d) inform itself of the labour, plant and equipment and other items necessary, suitable or desirable to enable the Responder to discharge its obligations under the EOI and subsequent Contract;
- (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 EOI is accurate and complete; and
- (h) satisfy itself that its EOI complies in all respects with the requirements of the Request for EOI.

4.2 In evaluating EOIs and determining with whom it will enter into an agreement (via a Contract), Council will rely upon Responders 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 Responder of responsibility to fulfil the EOI Specifications and subsequent Contract in accordance with its terms, and in particular, the price or rate Response by the Responder.

4.4 Council will not be liable for any expenses or losses incurred by the Responder in:

- (a) attending site inspection;
- (b) preparing and lodging its EOI;
- (c) participating in any post EOI activities;
- (d) in connection with the Request for EOI or the Request for EOI process (including but not limited to the exercise of a right by Council in accordance with the Request for EOI or otherwise).

4.5 An EOI Response will not be considered if the Responder 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 EOI.

5. FORMAL REQUIREMENTS

5.1 Responders are required to submit their EOI electronically and upload their response documents using Vendorpanel (www.vendorpanel.com.au). All files, including attachments, should be saved into one folder and labelled with the company name.

5.2 The EOI Response must be fully completed, and include all supporting documents and materials required by both the Conditions of EOI and the EOI Response.

5.3 The EOI Response must be duly executed in a manner that binds the Responder.

5.4 The Contract Price in the EOI Response must be:

- (a) in Australian dollars; and
- (b) unless otherwise specified in the EOI Response, GST inclusive.

5.5 The identity of the responder is fundamental to Council. For the purposes of a Responder's EOI, the Responder is the person, persons, corporation or corporations:

- (a) who is named as the Responder in the EOI Response; and
- (b) who has duly executed the EOI Response in a manner that binds the responder.

5.6 If the Responder 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 EOIS

6.1 A Responder may lodge an Alternative EOI.

6.2 Each Alternative EOI must be accompanied by a clear summary of all points of difference between the Alternative EOI and the Specification.

6.3 Each Alternative EOI must be submitted on a separate EOI Response.

6.4 A EOI is a Conforming EOI if the EOI complies with the requirements of the Request for EOI, and at a minimum, includes a EOI that is fully compliant with the Specification and that materially complies with the EOI Terms & Conditions.

6.5 If more than one Conforming EOI is lodged, each EOI must be accompanied by a clear summary of all points of difference between each Conforming EOI.

6.6 Council may, in its absolute discretion, determine if a EOI is a Conforming EOI.

6.7 Council may, but will not be obliged to, consider or accept a Non-Conforming EOI.

7. LODGEMENT OF EOI

7.1 "Part 1 – Invitation to Respond & Information for Responders" details the Closing Time for EOIs and that EOIs must be lodged using the Vendorpanel website.

Late EOIs will be accepted at Council's absolute discretion.

7.2 Council may extend the Closing Time at its discretion.

7.3 A EOI will not be accepted if it is submitted only:

- (a) by facsimile; or

(b) in hard copy.

7.4 A Responder must not alter or add to the EOI Response unless required by the Conditions of EOI.

7.5 A EOI 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 responder and Council.

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

8. OPENING OF EOIS

8.1 EOIs will be opened after the Closing Time.

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

- (a) the price may not be an accurate indicator to the market, as the EOI may be subsequently assessed as incomplete or non-compliant;
- (b) some of the material may be considered commercial-in-confidence by Responders;
- (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. EOI EVALUATION PROCESS

9.1 EOIs 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 EOI will be evaluated in accordance with this clause 9 and using the information provided in the EOI Response.

9.3 In evaluating EOIs, Council may:

- (a) require presentations from Responders;

- (b) conduct interviews with Responder's staff and subcontractors;
- (c) contact Responder's referees;
- (d) investigate a Responder's structure and management, and that of any relevant subsidiary or related corporation;
- (e) make its own assessment of the Responder's ability to comply with the terms and conditions of the EOI and subsequent Contract at the Responder's price; and
- (f) verify that the Responder holds all necessary permits, licences, approvals and certifications necessary to enable it lawfully to comply with the terms and conditions of the EOI and subsequent Contract.

9.4 Responders must give the members of the evaluation panel of Council any cooperation and assistance reasonably requested of them to facilitate consideration of their EOIs.

9.5 It is important that Responders address all requirements within the EOI Response. **Incomplete EOIs, 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 EOI are specified in the EOI 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 Responder must address each of the criteria specified in the EOI Response. If a Responder fails to address any of the criteria in the EOI Response, the EOI may be rejected by Council at its absolute discretion.

Compliance requirement (a EOI Checklist) for the Request for EOI are specified in Item 6 of the EOI Response. Each EOI will be assessed on a Yes/No basis as to whether each of the compliance criterion is satisfied by the Responder or not. If a EOI Response is assessed as "No" in respect of a criterion, the EOI 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 Responder's association with the Maranoa region. This may include (but is not limited to) a consideration of whether the Responder 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 EOI.

9.7 Without limitation to Council's rights under any other provision of these Conditions of EOI, Council may change any evaluation criteria set out or referred to in this clause 9 without any obligation to notify Responders of such change.

10. CLARIFICATIONS AND VARIATIONS

10.1 Council may issue to any or all Responders before the Closing Time:

- (a) additional information; and

- (b) information clarifying or correcting information previously provided, to assist them in preparing their EOIs.

10.2 If Council issues information to Responders under Clause 10.1, each Responder must take the information into account in the preparation of its EOI.

10.3 A prospective Responder may submit a written request for clarification of any part of the EOI documents prior to lodgement of their response, using the on-line EOI forum on the EOI 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 EOI, such response shall be recorded and distributed to all parties who have properly and duly obtained official EOI documents. Council shall not disclose the identity of the Responder who originally requested the information to any of the other Responders.

10.6 If any responder has any doubt as to the meaning of any portion of the EOI documents, the Responder must include a 'Statement of Interpretation' upon which the Responder relies and on the basis of which the EOI Response has been prepared.

10.7 This Statement of Interpretation, any addendums and clarification questions and answers shall be included by the Responder with the EOI 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 Responder;
- (b) provide additional information to any or all Responders;
- (c) invite all Responders or a Responder to change their EOIs in response to any change in the connection with the Request for EOI process, including but not limited to an alteration to the Specification or any of the terms and conditions of the Contract; and
- (d) negotiate with one or more Responders upon any aspect of their EOIs, including in relation to the Responder's rates or prices.

11. COMMISSIONS AND INCENTIVES

11.1 An EOI 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 EOI is evaluated or the Purchase Order/Contract awarded.

12. CONFIDENTIALITY

12.1 The Responder:

- (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 EOI;
- (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 EOI;
- (d) must allow access to the Confidential Information by Relevant Persons only to the extent necessary to enable the EOI 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 Responder may be given or withheld on such terms and conditions as Council considers appropriate.

12.3 The Responder's obligation under this Clause 12 continues after closure of the Request for EOI process and execution of the Purchase Order/Contract.

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 Responder 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 Responder can establish that:

- (a) the item has been transferred to the public domain through no fault of the Responder;
- (b) the item was already in the Responder'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 Responder to keep the item confidential.

13. ACCEPTANCE OF EOI

13.1 Unless otherwise stated in the Request for EOI, a EOI 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 Responder;
- (b) provide additional information to any or all Responders;

- (c) proceed to negotiate or enter into discussions with any or all Responders, including but not limited to the Responder's rates or prices;
- (d) discontinue negotiations with any Responder;
- (e) accept or reject any EOI response or all EOI responses;
- (f) abandon the Request for EOI process; and
- (g) do any other act or thing that it sees fit in relation to the Request for EOI process.

13.3 Council is not obliged to reissue the EOI, or in any other way provide an opportunity to any Responder to amend or re-submit its EOI, irrespective of:

- (a) any EOI submitted by any Responder;
- (b) any matter arising out of the post EOI discussions and negotiations with the preferred Responder.

13.4 An EOI is not accepted by Council until the Purchase Order/Contract 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 EOI is potentially subject to disclosure to third parties. In the assessment of any disclosure required by Council pursuant to the RTI Act, the Responder accepts that any information provided in its EOI, 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 Responder 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 Responders concerning the content or effect of the RTI Act.

15. OWNERSHIP OF EOI RESPONSE'S

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

15.2 However, the Responder shall retain copyright and other intellectual property rights in respect of the EOI except to the extent specified in the Purchase Order/Contract.

15.3 Council may reproduce the EOI for the purposes of evaluation.

16. POLICIES PARTICULAR TO COUNCIL

16.1 By submitting an EOI, the Responder 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 Responders must clearly identify in their EOI whether or not they have any actual, perceived or potential conflict in responding to this Request for EOI, 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 Responder, that Responder must immediately notify Council in writing of that conflict of interest.

17.3 If a Responder 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 EOI lodged by the Responder; and/or
- (c) take any other action, as it considers appropriate.

18. COLLUSIVE BEHAVIOUR

18.1 Responders 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 Responder or any other person in relation to the preparation or lodgement of a EOI.

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 EOI lodged by a Responder that engaged in any collusive behaviour, anti-competitive conduct or any other /similar conduct with any other Responder or any other person in relation to the preparation or lodgement of its EOI.

19. APPLICABLE LAW

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