



CONDITIONS OF TENDER

TABLE OF CONTENTS

SEGMENT A - CONDITIONS OF TENDER	2
1. Interpretation and Definitions	2
2. General	2
3. Tender Fee	2
4. Tender Closing Time and Late Tenders.....	2
5. Acceptance	3
6. Delivery Method	3
7. Lodgement of Tenders	3
8. Copies of Tender.....	3
9. Discrepancies, Errors and Omissions in RFT document	4
10. Tender Clarification	4
11. Tenderer's Contact Officer.....	4
12. Tender Validity Period	4
13. Evaluation PROCESS	4
14. Compliance	5
15. Clarification of Tenders	5
16. Pricing Information	5
17. Tenderer Presentations and Site Visits	5
18. Alternative Tenders.....	5
19. Financial Viability and Probity Checks	6
20. Equal Tenders.....	6
21. Freedom of Information.....	6
22. Conflict of Interest	6
23. Competitive Neutrality	7
24. Ownership of Documents.....	7
25. Joint Undertakings and Joint Ventures	7
26. Opening of Tenders	7
27. the University's Policies	7
28. the University's Rights	7
29. No Contract or Undertaking	8
30. Tenderer's Acknowledgements	8
31. Tenderer Warranties	9

SEGMENT A - CONDITIONS OF TENDER

1. INTERPRETATION AND DEFINITIONS

1.1 Interpretation

Throughout this document, unless the contrary intention appears:

- (a) words in the singular shall include the plural and the plural include the singular; and
- (b) words importing persons shall include firms and corporations.

1.2 Definitions

The following words have these meanings in these Conditions of Tender unless the contrary intention appears:

'Closing Time' means the time and date specified on the front page of this RFT.

'Contact Officer' means the person nominated on the front page of this RFT.

'Contract' means the written agreement between the parties as described in the formal letter of acceptance issued by the University or evidenced by the executed formal instrument of agreement and includes all parts, schedules, and attachments.

'Fee' means the fee payable by the University for the Services set out in Segment D Item D2.

'Instrument of Agreement' means a formal contractual document that includes parts, schedules, and attachments.

'Services' means the whole of the services to be carried out and completed in accordance with the Contract.

'RFT' means the University's Request for Tender for the provision of the services.

'Tender' means any Tender, Conforming or Non-conforming, in response to this RFT.

'Tenderer' means any the entity or person who submits a Tender in response to this RFT.

'Tender Box' means the Tender Box at the location and address specified on the front page of this RFT.

'University' means the University of Newcastle.

2. GENERAL

- (a) The Tenderer submits its Tender to carry out the Services for the Fee and warrants that it submits its Tender in good faith.
- (b) The Tender is submitted as an offer that may be accepted by the University by a letter of acceptance.
- (c) Unless otherwise agreed the terms of the Contract will be in accordance with the RFT.
- (d) The University may issue a formal instrument of agreement if it so chooses.

3. TENDER FEE

Unless specifically mentioned, the University will not require a Tender fee.

4. TENDER CLOSING TIME AND LATE TENDERS

- (a) Tenders must be received in the Electronic Tender Box by the Closing Time.

- (b) If there is a failure to comply with the Closing Time or a submission is received at another point other than the Electronic Tender Box and not lodged in accordance with the requirements of this RFT, it may lead to the Tender not being considered further by the University. Acceptance of the Tender is at the absolute discretion of the University and the University is not required to give reasons for its decision whether or not to consider the Tender.
- (c) The judgement of the University as to the actual time that a Tender is lodged is final.
- (d) The Closing Time may be extended by written notice at the absolute discretion of the University.

5. ACCEPTANCE

Unless otherwise stated in the RFT, Tenders may be for all or part of the requirement and may be accepted wholly or in part. The lowest priced Tender or any other Tender need not be accepted and no Tender shall be deemed to have been accepted until formally notified by the University.

Acceptance of a Tender shall be conditional on the successful negotiation of all the terms and conditions of a contract for the required services.

6. DELIVERY METHOD

Tenders must be submitted electronically to the relevant Tenderlink Tender Box in accordance with the instructions within the RFT document (refer front page and Segment D).

Hard copy tender documents are to be supplied and will only be accepted if an electronic tender has first been submitted (refer Segment A - section 8).

7. LODGEMENT OF TENDERS

Response to the Technical and Functional aspects of this Tender are to be lodged in the Electronic Tender Box labelled "**Technical**".

The Payment Schedule (**Schedule D2 – Contract Product Pricing**) must be separated from the Technical Tender response and lodged in the Electronic Tender Box labelled "**Financial**".

Tenders shall be presented in the format required by the University. Tenders must be in plain English, legible and must not contain any alterations or erasures.

8. COPIES OF TENDER

Tenderers are required to provide hardcopies of the electronically submitted tender response for the Technical section to the University. Tenderers are not to provide hardcopies of the tender response that detail pricing (e.g. the Financial response). The number of hardcopies is specified on the front page of the tender document.

- (a) The Original Tender document must be presented in electronic format to the tender box(s) first.
- (b) Within 24 hours and no later than 48 hours from placing a response in the electronic tender box, Tenderers are to deliver (in person, via courier, or mail) the required number of hardcopy responses to:

**Commercial Services
Room CH219, the Chancellery
The University of Newcastle
University Drive, CALLAGHAN N.S.W. 2308**

- (c) Packages are to be marked to the attention of the University Contact Officer shown on the front page of the RFT document.

9. DISCREPANCIES, ERRORS AND OMISSIONS IN RFT DOCUMENT

If the Tenderer becomes aware of any discrepancy, error or omission in the Tender submitted and wishes to lodge a correction or additional information, the Tenderer must advise the Contact Officer immediately. The material is to be provided in writing to the Contact Officer at the address detailed on the front page of the RFT.

Consideration of corrections to Tenders or additional information is at the absolute discretion of the University and the University is not required to give reasons for its decision whether or not to consider such information.

10. TENDER CLARIFICATION

- (a) Enquiries by prospective Tenderers regarding this RFT shall be submitted via the online forum in the Tenderlink System.
- (b) If there is any doubt as to the meaning of any parts of the RFT clarification shall be requested via the online forum referred to above. Clarification shall be valid only if issued via this medium. Any clarification given by the University pursuant to this clause shall also be issued to all prospective Tenderers, unless the Tenderer making the request can satisfy the University (at its absolute and unfettered discretion) at the time of making the request that to do so would harm its position. Any such requests should be made via email to the Contact Officer. The decision of the University in this regard shall be final.
- (c) A copy of questions raised and responses provided will be forwarded by email to prospective respondents and will also be displayed in the online forum.
- (d) In the event that a question leads to an addendum being made, a notice will be sent electronically to all Tenderers that have downloaded the documents.

11. TENDERER'S CONTACT OFFICER

All Tenderers are to nominate a person for the purposes of answering questions that may arise during examination of Tenders. The name, address, telephone and facsimile number, and email address of that person should be provided in Segment D Item D1.

12. TENDER VALIDITY PERIOD

It is a condition of this RFT that each Tender offer remains open for acceptance by the University for a period of no less than four (4) months from the Closing Date and Time.

13. EVALUATION PROCESS

Tenders will be evaluated to identify the option that represents best value for money, that is, the Tender that has the greatest merit or benefit in proportion to its price. Value for money will be determined based on the consideration of capability, technical, financial contractual and longer term assessment.

Neither the lowest priced Tender, nor any Tender, will necessarily be accepted by the University. The University unconditionally reserves the right to accept or reject any Tender regardless of compliance or non-compliance with this RFT.

In determining best value for money, the University is obliged to satisfy itself that prices offered are reasonable. The Tenderer agrees to provide access to such information as determined by the University as necessary in order to evaluate the reasonableness of the Tendered prices.

The University will evaluate Tenders having regard to the financial (price), technical or service requirements and commercial compliance. The information used for this evaluation will be the information provided by the Tenderer in Segment D with the evaluation criteria being criteria taken from the Items in Segment D.

Mandatory Criteria:

- To be advised

Desirable Criteria:

- To be advised

External information such as commercial information, references, and understanding of the site may be used in the evaluation.

14. COMPLIANCE

- (a) The Tenderer must complete all Items of Segment D and other documentation in the form required by the RFT.
- (b) Any Tender which does not fully comply with these Conditions of Tender (or the RFT) may be rejected by the University. The University may, in its absolute discretion, consider and accept any Tender, other offer or proposal notwithstanding such Tender, other offer or proposal that may not comply with or conform to the requirements of this RFT.
- (c) The RFT comprises the documents listed in the "Table of Contents" above.
- (d) Acceptance of alternative Tenders will be at the absolute discretion of the University.

15. CLARIFICATION OF TENDERS

The University may ask Tenderers to clarify information in their Tenders during the Tender evaluation process. Tenderers should note that this will not be an opportunity to present new or additional material.

The Tenderer should not interpret a request to clarify the Tender as being an indication that its organisation will or will not be the successful Tenderer. All such contact will be strictly confidential. A Tenderer's failure to observe confidentiality may result in exclusion of the Tenderer from further consideration.

16. PRICING INFORMATION

Pricing information specified in Tenders must be:

- (a) expressed in Australian dollars;
- (b) inclusive of all charges, expenses, duties and taxes, subject to the requirements regarding Goods and Services Tax (GST);
- (c) inclusive of GST, but identify separately the GST component; and
- (d) apply for the duration of the validity period in Part A12.

17. TENDERER PRESENTATIONS AND SITE VISITS

As part of the evaluation process, Tenderers may be required to give a presentation of their submissions to the RFT evaluation team. If appropriate, presentations may be held in conjunction with a site visit.

18. ALTERNATIVE TENDERS

Each Tenderer will be permitted to submit a single Tender, within which the University is prepared to consider, in its absolute discretion, alternative approaches to those requested in this RFT where the Tenderer demonstrates that such alternative approaches may be more beneficial to the University than the approaches specified in this RFT. However, the University will consider an alternative approach only if the Tenderer also provides in its Tender a response that conforms to the approach specified in, and the requirements of, this RFT.

Where an alternative approach or solution is proposed, a Tenderer must:

- (a) separately identify, in detail, the proposed alternative approach or solution at Segment D;
- (b) justify the proposed alternative approach or solution with explicit reasons; and

- (c) explain the financial impact (including both the impact on the Tenderer's pricing proposal and the impact on the University's retained costs),
- (d) and any other consequences of the proposed alternative approach or solution relative to the conforming approach.

19. FINANCIAL VIABILITY AND PROBITY CHECKS

It will be necessary for the University to assure itself as to the financial viability and stability of the prospective contractor. The University may conduct detailed financial evaluations of Tenderers. The University may also undertake such probity checks and procedures as the University, at its absolute discretion, may determine are necessary in relation to this Tender process.

For this purpose, Tenderers should provide where requested details of relevant financial data concerning the Tenderer.

To safeguard the confidentiality of the organisation's financial statements, the University shall only require to sight and evaluate relevant financial statements.

In agreeing to supply relevant financial statements, the Tenderer also agrees that the information supplied represents a true and fair statement of the affairs of the Tenderer, confirmed by the signing of a Statutory Declaration.

Such information should include:

- (a) copies of audited trading and profit and loss accounts and balance sheets for the preceding three (3) years;
- (b) annual reports; and
- (c) particulars of any petition, claim, action, judgement or decision which is likely to adversely affect the Tenderer's performance of the Contract and any other information considered by the University to be necessary to complete its assessment of financial viability.

20. EQUAL TENDERS

Where two Tenders are assessed as being equal, the successful one will be selected by the following method in the order shown:

- (a) the incumbent or most recent satisfactory supplier;
- (b) local contractor in preference to contractor from outside the region;
- (c) the first of the Tenders received; and
- (d) by ballot involving the Associate Director Commercial Services, and an independent member of staff.

21. FREEDOM OF INFORMATION

Tenderers should be aware that the *Freedom of Information Act 1989 (NSW)* gives members of the public right of access to documents in the possession of the University. The Act extends as far as possible the right of the Australian community to access information (generally documents) in the possession of the University, which may include Tender, Contract, and related documents and be limited only by exceptions and exemptions necessary for the protection of commercial in confidence information.

22. CONFLICT OF INTEREST

Where Tenderers identify that a conflict of interest might arise in the provision of the Services, Tenderers are to identify that potential conflict of interest in their Tender. If at any time prior to entering into a Contract for the Services, an actual or potential conflict of interest arises or may arise for any Tenderer, that Tenderer must immediately notify the University in writing. If any conflict of interest might arise for a Tenderer before entering into a Contract for the Services, the University may, in its absolute discretion:

- (a) enter into discussions to seek to resolve such conflict of interest; or
- (b) disregard the Tender submitted by such a Tenderer; or
- (c) take any other action, as it considers appropriate.

23. COMPETITIVE NEUTRALITY

Competitive neutrality requires that Government business activities should not enjoy net competitive advantages over their private sector competitors simply by virtue of public sector ownership.

Tenderers from the public sector must demonstrate in the pricing of their Tender that the requirements of competitive neutrality have been met, including payment of relevant taxes and charges, rates of return and costs of funds. Compliance with the requirements of competitive neutrality may be verified by the University.

24. OWNERSHIP OF DOCUMENTS

All documents submitted in response to this RFT shall become the property of the University.

25. JOINT UNDERTAKINGS AND JOINT VENTURES

Any Tender which is submitted by a combination of two or more organisations, as a joint venture, a consortium or otherwise, shall clearly state the nature of the association between the organisations and the basis upon which they propose to contract with the University in which event they shall be jointly and severally bound by the Tender and by the Contract if their Tender is accepted, and shall be jointly entitled to the benefit of the Contract if their Tender is accepted. This information must be provided in Segment D Item D1.

26. OPENING OF TENDERS

Neither Tenderers nor their representatives will be permitted to attend the opening of Tenders.

27. THE UNIVERSITY'S POLICIES

- (a) The University will assess all Tenders in accordance with its Procurement Policy and Procedures.
- (b) The University is committed to acting with integrity and probity and expects all participating parties to act with integrity and probity in relation to the tender process and all aspects of the Tender and Contract. The University requires that Tenderers have due regard to probity throughout all processes undertaken pursuant to this RFT. The University may appoint an independent probity adviser to assist it in this regard.
- (c) In accordance with the University's policy to publicly disclose details of its contracts, the University may publish information about a contract awarded under this RFT. This information may include:
 - (i) details of Services Contract (description of project to be completed or goods/services to be provided or property to be transferred; commencement date of the Contract; the period of the Contract); and
 - (ii) the full identity of the successful Tenderer including details of cross ownership of relevant companies.

28. THE UNIVERSITY'S RIGHTS

Without limiting its rights at law or otherwise, the University reserves the right, in its absolute discretion at any time to:

- (a) cease to proceed with the Tender Process outlined in this RFT;
- (b) change the structure and timing of this process;
- (c) suspend or vary the process or any part of it;
- (d) refuse to accept or consider any Tender;

- (e) require additional information or clarification from any Tenderer or anyone else or provide additional information or clarification;
- (f) forward any clarification of the meaning of the content of this RFT to all Tenderers;
- (g) negotiate with any one or more Tenderer and allow any Tenderer to change its Tender;
- (h) terminate any negotiations being conducted at any time with any Tenderer for any reason;
- (i) waive or vary any obligation of any Tender under a contract;
- (j) add to, alter, delete or exclude any services to be acquired or include additional services within this RFT process;
- (k) not to offer the contract to any Tenderer from this process; and
- (l) call for new Tenders.

29. NO CONTRACT OR UNDERTAKING

Every Tender is made on the basis that the Tenderer acknowledges that:

- (a) nothing in this RFT will be construed to create any binding contract (express or implied) between the University and any Tenderer; and
- (b) any conduct or statement, whether prior to or subsequent to the issue of this RFT is not, and the RFT is not, and must not be deemed to be an offer to contract, or a binding undertaking of any kind.

30. TENDERER'S ACKNOWLEDGEMENTS

Every Tender is made on the basis that the Tenderer acknowledges that it:

- (a) examined this RFT and any other information available for the purposes of submitting a Tender;
- (b) examined all information relevant to the risks, contingencies, and other circumstances having an effect on the Tender including satisfying itself as to the requirements for the Services which is obtainable by the making of reasonable enquiries;
- (c) in lodging its Tender it did not rely on any express or implied statement, warranty or representation made by, or on behalf of the University, except those statements, warranty and representations contained in this RFT;
- (d) did not use the improper assistance of University employees or ex employees or information unlawfully obtained from the University in compiling its Tender response;
- (e) satisfied itself as to the correctness and sufficiency of the Tender and that all prices cover the cost of complying with all the Conditions of Tender and of all matters and things necessary for the due and proper provision of the Services;
- (f) should have obtained and will be deemed to have obtained advice on all relevant legislation and its impact on their participation in this process;
- (g) this Tender is governed by the provisions of these Conditions of Tender read with the other documents comprising the RFT;
- (h) satisfied itself as to the correctness and sufficiency of its Tender;
- (i) has not provided nor will it provide false and misleading information to the University;
- (j) no conflict of interest exists at the date of submitting this Tender. The Tenderer will immediately inform the University of it becoming aware of any actual or potential conflict of interest;
- (k) evidence of collusive tendering may lead to the rejection of some or all Tenders and Tenderers involved in such practices may be barred from tendering to the University in the future; and
- (l) is responsible for all costs and expenses related to the preparation and lodgement of its Tender, any subsequent negotiations and any other action or response in relation to this RFT.

Where Tenderers have made assumptions in preparing Tenders or where a Tender includes qualifications or exclusions in relation to specified requirements or conditions, these are to be clearly defined in the Tender and in particular qualifications or exclusions are to be included in Segment D Item D4.

31. TENDERER WARRANTIES

(a) The Tenderer warrants that:

- (i) neither the Tenderer nor any of its servants or agents have entered into any contract, arrangement or understanding to pay moneys or provide any other consideration or benefit to any trade association apart from the normal amount (annual subscription, turnover or contract fee) imposed by that trade association, in the event that it is the successful Tenderer;
- (ii) neither the Tenderer nor any of its servants or agents had any knowledge of the price of any other Tenderer prior to submitting this Tender nor has the Tenderer or any of its servants or agents disclosed to any rival Tenderer the Tenderer's price prior to the closing of Tenders;
- (iii) the Tenderer submits this Tender in good faith and has not deliberately set its Tender price above or below the level of rival Tenderers; and
- (iv) neither the Tenderer nor any of its servants or agents has entered into any contract, arrangement or understanding having the result that, in the event that it is successful in this Tender, it will pay to any unsuccessful Tenderer any moneys or provide any other consideration or benefit in respect of or in relation to the Tender or any contract arising from it.