
Delivering Community Services in Partnership

**Purchase of Community Services
By Public Authorities**

TABLE OF CONTENTS

1. DEFINITIONS AND INTERPRETATION	3
2. RESPONDENT'S PARTICIPATION IN EOI PROCESS	7
3. GENERAL.....	7
4. STATE PARTY'S RIGHTS	9
5. LEGAL RELATIONSHIP.....	10
6. INFORMATION FROM THE STATE PARTY	11
7. ADDENDA	11
8. PROTOCOL FOR ENQUIRIES, CLARIFICATION QUESTIONS ETC.....	12
9. RESPONDENT'S REPRESENTATIONS AND WARRANTIES.....	13
10. STATUS OF REQUEST, EOI AND RESPONDENT	13
11. CONFIDENTIALITY AND DISCLOSURE BY RESPONDENT	15
12. STATE PARTY'S PUBLIC DISCLOSURE AND FREEDOM OF INFORMATION	16
13. PROBITY	17
14. COLLUSION	18
15. MISCELLANEOUS	18

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In the Request for EOI, unless the context otherwise requires, terms which are not otherwise defined but which have a defined meaning in the General Provisions, have the same meaning when used in the Request for EOI.

In the Request for EOI, unless the context otherwise requires:

Addendum means modifications or clarifications to the Request for EOI issued by the State Party pursuant to clause 7 which, by virtue of clause 7, are deemed to form part of the Request for EOI.

Business Day means any day except a Saturday, Sunday or a public holiday in Perth, Western Australia.

Change in Control means, in respect of the Respondent, a change in the person or persons who, directly or indirectly, ultimately Control the Respondent.

Claim means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity).

Closing Time means the date and time set out as the closing time on the front page of the Request for EOI.

Confidential Information means information in the Request for EOI or otherwise in connection with the EOI Process that:

- (a) is by its nature confidential; or
- (b) is specified by the State Party to be confidential, including any information specified to be confidential in the Request for EOI; or
- (c) the Respondent knows or ought to know is confidential.

Consequential Loss means indirect or special loss, loss not likely to arise naturally or in the usual course of things, the cost of capital or other financing costs, all loss of profit, income, business opportunity, goodwill or reputation, and any other loss or liability which would fall within the second limb of losses referred to in *Hadley v Baxendale* (1854) 9 Ex 341.

Control has the meaning given in the *Corporations Act 2001*(Cth).

Director has the meaning given in the *Corporations Act 2001* (Cth).

Disclosure Requirements means the requirements (if any) referred to as such in the Response Form.

EOI means any Expression of Interest lodged in response to the Request for EOI.

EOI Process means the EOI process set out in the Request for EOI, or as varied by the State Party.

- (k) a reference to the Request for EOI or another instrument includes all variations and replacements of either of them despite any change of, or

1.3 Exclusions

If any of the Process Terms and Conditions purports to exclude liability for a particular matter, such exclusion only operates to the extent permitted by law.

1.4 Status of this document

This Process Terms and Conditions Document is deemed to be incorporated in, and to form and to be read as part of, the Request for EOI and to bind the State Party and the Respondent.

2. RESPONDENT'S PARTICIPATION IN EOI PROCESS

By lodging an EOI, the Respondent agrees:

- (a) to comply with the Request for EOI (including the Process Terms and Conditions) for the duration of the EOI Process; and
- (b) that it participates in the EOI Process at its own cost and risk.

3. GENERAL

3.1 State Party

- (a) Subject to clause 3.1(b), in the Request for EOI, unless the context otherwise requires, "State Party" means the issuing agency referred to on the front page of the Request for EOI.
- (b) If the State Party is a body corporate created by or existing under statute, then in this Process Terms and Conditions Document:
 - (i) a reference to any loss, cost or expense incurred by the "State Party" is a reference to such loss, cost or expense incurred by either or both of the issuing agency referred to in clause 3.2(a) and the State; and
 - (ii) a release, or limitation of liability or responsibility, in favour of or for the benefit of the "State Party" is deemed to be in favour of or for the benefit of both the issuing agency referred to in clause 3.1(a) and to the State.

3.2 Facsimile lodgement

If the Respondent lodges an EOI by facsimile, the Respondent agrees that:

- (a) receipt of the EOI will be determined by the date and time which the State Party's recipient facsimile machine records that the facsimile was successfully received;
- (b) in the event that there is any discrepancy between the facsimile EOI and an original EOI subsequently lodged by the Respondent, the facsimile EOI will take precedence unless the Respondent can demonstrate to the

- (iii) where the original copy of the EOI was lodged through Tenders WA, provide a copy of the Tenders WA receipt for the initial attempted electronic submission.

3.4 Late lodgement

- (a) Any EOI which is not lodged before the Closing Time will be excluded from consideration unless the Respondent can provide conclusive evidence of mishandling of its EOI.
- (b) For the purposes of the Request for EOI, mishandling of an EOI will only have occurred where:
 - (i) the EOI was received by or on behalf of the State Party (whether

- (i) the State Party's knowledge of and previous experience and dealings with the Respondent;
- (ii) without limiting clause 4.1(c)(i), information about the past or current performance of the Respondent under any contract, arrangement or dealing between the Respondent and a Public Authority; and
- (iii) information concerning the Respondent which is in the public

- (a) the Request for EOI does not constitute an offer to enter into any agreement;
- (b) the Request for EOI constitutes the entire agreement of the parties in respect of the EOI Process;

- (c) the State Party will not be liable for any costs, losses, expenses or damages incurred by the Respondent as a consequence of any such Addenda; and
- (d) the Respondent must prepare its EOI to take into account and reflect the content of any Addendum.

7.2 REQUEST FOR EOI ONLY AMENDED OR SUPPLEMENTED BY ADDENDA

The Respondent agrees that the Request for EOI may only be amended or supplemented by Addenda issued under clause 7.1.

8. PROTOCOL FOR ENQUIRIES, CLARIFICATION QUESTIONS ETC.

8.1 Disclosure of Information

- (a) Subject to clause 8.1(b), the State Party reserves the right to disclose:
 - (i) enquiries or clarification questions made or asked by the Respondent; and
 - (ii) information provided by the State Party to the Respondent, to other Respondents in any manner the State Party considers appropriate, including circulating written enquirie

- (b) conduct Workshops with the Respondent, either alone or with other Respondents, to discuss the Request for EOI or the relevant Respondent's EOI or prospective EOI or to otherwise request clarification

- B. to any additional information submitted to the State Party pursuant to the Request for EOI; or
 - (ii) of any event which may affect or have a material impact on its financial position or capacity; or
 - (iii) of any circumstances which may affect the truth, completeness or accuracy of any of the information provided in, or in connection with, the Request for EOI; or
 - (iv) if, after lodgement of its EOI:
 - A. there is a change in the structure of the Respondent or there is otherwise a Change in Control of the Respondent; or
 - B. in respect of a Respondent which consists of a consortium, there is a change of membership of the consortium.
- (b) Upon receipt of any written notification pursuant to clauses 10.1(a) (i) – (iv), the State Party reserves the right to assess the change and terminate the Respondent's further participation in the EOI Process, or to invite the Respondent to amend its EOI accordingly.

10.2 No amendment

- (a) The Respondent may not amend an EOI (unless invited or requested to do so by the State Party) after the Closing Time.
- (b) Without limiting the State Party's rights to invite or request the Respondent or a competing Respondent to amend its EOI, the Respondent acknowledges that the State reserves the right to:
 - (i) require the Respondent or a competing Respondent to withdraw any part of its EOI which specifies or results in a departure from the requirements set out in the Request for EOI at any time; and
 - (ii) allow the Respondent or a competing Respondent to correct patent typographical or arithmetic errors in an EOI at any time,
 without allowing or requiring any other Respondent to do so.

10.3 No requirements to return

- (a) The Respondent agrees that:
 - (i) each EOI is the absolute property of the State Party; and
 - (ii) the State Party will not be required to return the Respondent's EOI or any documents, materials, articles or information lodged by the Respondent as part of, or in support of the EOI.

- (b) The Respondent agrees to grant the State Party an irrevocable, perpetual, royalty free, non-exclusive licence to disclose, copy, use, adapt, modify, sublicense or reproduce the whole or any portion of the Respondent's EOI for the purposes of evaluation and clarification of the Respondent's EOI and for the purposes of any action which the State Party takes in respect of the Respondent's EOI..

11. CONFIDENTIALITY AND DISCLOSURE BY RESPONDENT

11.1 Confidential Information

- (a) The Respondent must keep Confidential Information confidential. The Respondent must not disclose, use, reproduce or distribute to any person the Confidential Information except:
 - (i) where necessary (and only to the extent necessary) for the purpose of preparing and lodging an EOI and otherwise participating in the EOI Process; or
 - (ii) as authorised in writing by the State Party; or
 - (iii) to the extent that the Confidential Information is public knowledge (other than because of a breach of this clause by the Respondent); or
 - (iv) as required by any law, judicial or parliamentary body or governmental agency; or
 - (v) when required (and only to the extent required) to the Respondent's professional advisers, and the Respondent must ensure that such professional advisers are bound by the confidentiality obligations imposed on the Respondent under this clause 11.1(a).
- (b) The Respondent must immediately notify the State Party if it becomes aware of a suspected or actual unauthorised disclosure, copying or use of the Confidential Information.

12. STATE PARTY'S PUBLIC DISCLOSURE AND FREEDOM OF INFORMATION

12.1 State Party's public disclosure obligations

The Respondent agrees to:

- (a) the disclosure by any person to the State Party of information concerning the Respondent's EOI, or the Respondent, for the purpose of the State Party exercising its rights set out in the Request for EOI or at law;
- (b) the State Party disclosing any aspect of the Respondent's EOI or any other information provided by the Respondent to the State Party during the EOI Process to enable the State Party to meet public disclosure obligations the State Party may have:
 - (i) under any current or future legislation; or
 - (ii) under any current or future policy of the State or the State Party; or
 - (iii) in the course of official duties of the Minister responsible for the State Party; or
 - (iv) to satisfy requirements of parliamentary accountability; or
 - (v) under annual reporting obligations of the State Party; or
 - (vi) to satisfy any other recognised public requirement; and
- (c) the State Party publicly disclosing information in relation to the EOI Process, the Request for EOI or the details of the Respondent.

12.2 Freedom of Information Act and other legislation

- (a) The Respondent acknowledges that the Freedom of Information Act 1992 (WA) (**FOI Act**) applies to the information provided by the Respondent in its EOI or as otherwise submitted by the Respondent to the State Party pursuant to the Request for EOI.
- (b) The Respondent agrees and acknowledges that the powers and responsibilities of the Auditor General for the State under the *Financial Management Act 2006* (WA) and the *Auditor General Act 2006* (WA) are not limited or otherwise affected by the Request for EOI.
- (c) The Respondent releases the State Party from all liability whatsoever for any loss, injury, damage, liability, costs or expense resulting from the disclosure of its EOI or information, other than the Respondent's EOI, submitted by the Respondent in response to, or in connection with, the Request for EOI, under this clause by the State Party.

13. PROBITY

13.1 Inducement

The Respondent must not offer any incentive to, or otherwise attempt to, influence any of the persons who are either directly or indirectly involved in the EOI Process, or in the awarding of any subsequent contract. Without limiting the generality of this obligation, the Respondent must not:

- (a) without the prior written consent of the State Party, directly or indirectly approach or communicate with any officer or employee of the State Party or the State having any connection or involvement with the Request for EOI, with respect to:
 - (i) an offer of employment; or
 - (ii) availability of employment, with the Respondent or any related entity; or
- (b) directly or indirectly offer a bribe, gift or inducement to any officer or employee of the State Party or the State in connection with the Request for EOI.

13.2 Probity checks

Without limiting the State Party's rights pursuant to clause 4.1, the Respondent consents to the State Party undertaking probity checks in respect of the Respondent which may include:

- (a) investigations into organisational structure, business and credit history;
- (b) prior contract compliance in respect of other supplies of services;
- (c) police checks or any checks for any criminal records or pending charges; and
- (d) research into any relevant activity that is, or might reasonably be expected to be, the subject of regulatory investigation.

13.3 Conflict of interest

The Respondent must:

- (a) disclose in the EOI submitted by the Respondent any circumstances, arrangements or understandings which constitute, or may reasonably be perceived to constitute, an actual or potential conflict of interest with either the Respondent's obligations under the Request for EOI or any potential involvement of the Respondent in the Requirement;
- (b) provide details of its proposed strategy for managing any actual, potential or perceived conflict of interest disclosed in its EOI pursuant to clause 13.3(a);

(b) If the State Party fails or delays in exercising or enforcing any right or