
Delivering Community Services in Partnership Policy

**Purchase of Community Services
By State Agencies**

**Process Terms and Conditions and Definitions
(Request for Expressions of Interest)**

June 2021 Edition

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	11
6.	INFORMATION FROM THE STATE PARTY	12
7.	ADDENDA	12
8.		

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 any addendum in relation to modifications or clarifications to the Request issued by the State Party pursuant to clause 7 which, by virtue of clause 7, are deemed to form part of the Request, and is available on Tenders WA [www.tenders.wa.gov.au].

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

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 fiW*nBTF3 12 Tf1 0 0 1 4

State Party Representative means a person described as such in the Request for EOI or, if a State Party Representative has been replaced under clause 15.4, that replacement State Party Representative.

Tenders WA means the Western Australian Government electronic tender lodgement system maintained at www.tenders.wa.gov.au.

Workshop means a workshop, interview, meeting, question and answer session or briefing between the State Party and one or more Respondents.

1.2 Interpretation

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

- (a) the singular includes the plural and vice versa;
- (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (c) a reference to a gender includes other genders;
- (d) a reference to a person includes a State Agency, a public body, a company and an incorporated or unincorporated association or body of persons;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;
- (f) if the Respondent consists of a consortium of two or more persons whether by way of partnership or joint venture or otherwise, then:
 - (i) an obligation imposed on the Respondent under the Request for EOI binds each person who comprises the Respondent jointly and severally;
 - (ii) an EOI lodged by the Respondent is binding on those persons jointly and severally;
 - (iii) each person who comprises the Respondent agrees to do all things necessary to enable the obligations imposed on the Respondent under the Request for EOI to be undertaken; and

- (iv) the act of one person who comprises the Respondent binds the other persons who comprise the Respondent;
- (g) an agreement, representation or warranty on the part of or in favour of two or more persons binds, or is for the benefit of, them jointly and severally;
- (h) no rule of interpretation applies to the disadvantage of the State Party on the basis that the State Party put forward the Process Terms and Conditions;
- (i) "includes" in any form is not a word of limitation;
- (j) the meaning of "or" will be that of the inclusive "or", meaning one, some or all of a number of possibilities;
- (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 any change in the identity of, the State Party or the Respondent;
- (l) a reference to a document published at an electronic address is to the document as published at that electronic address on the date of first public issue of the Request for EOI;
- (m) a reference to a clause, schedule, attachment or appendix is a reference to a clause, schedule, attachment or appendix to the Request for EOI;
- (n) all the provisions in any schedule, attachment or appendix to the Request for EOI are incorporated in, and form and are to be read as part of, the Request for EOI and bind the State Party and the Respondent;
- (o) headings are included for convenience only and do not affect the interpretation of the Request for EOI;
- (p) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (q) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (r) a reference to writing includes any means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;

- (s) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (t) a reference to a month is to a calendar month and a reference to a year is to a calendar year;
- (u)

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 Lodgement of electronic documents

If the Respondent lodges an EOI through Tenders WA or otherwise in electronic form, the Respondent agrees that:

- (a) in respect of an EOI lodged through Tenders WA:
 - (i) receipt of the EOI will be determined by the date and time shown on the electronic tender lodgement service receipt issued or, if no receipt is issued, the date and time of receipt of the EOI as recorded in the Tenders WA data base; and
 - (ii) lodgement of electronic files may take time and the Respondent must make its own assessment of the time required for full transmission of the EOI;
- (b) in respect of an EOI lodged in hard copy and in electronic form, in the event that there is any discrepancy between the electronic copy of the EOI and the hard copy of the EOI lodged by the Respondent, the hard copy of the EOI will take precedence;
- (c) if the electronic copy of the EOI contains a virus then, notwithstanding any disclaimer made by the Respondent in respect of viruses, the Respondent must pay to the State Party all costs incurred by the State Party arising from, or in connection

(i) provide the copy in the form or

- (ii) the liability of the Respondent to the State Party arising out of or in connection with a breach by the Respondent of the Request for EOI or the EOI Process generally is limited to the reasonable legal and other professional costs (excluding internal costs) directly incurred by t

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- (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

- (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.
- (c) The Respondent must ensure that each person to whom it discloses the Confidential Information (except a person to whom disclosure is legally required) including any Officers, agents, advisers, consultants, contractors, nominees, licensees, employees and volunteers of the Respondent, complies with the obligations in clauses 11.1(a) and 11.1(b).

11.2 Survives termination

The obligations in clause 11.1 are continuing obligations and survive expiration or termination of the Respondent's participation in the EOI Process.

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 (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* and the *Auditor General Act 2006* 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.

15.3 Actions of State Party

Any matter which may be done by the State Party may be done by an authorised officer of the State Party (which includes the State Party Representative).

15.4 Replacement of State Tm0 g0 G[tate)8()JTJETQq0.00000912Q TfnBt1ETQq5 Tf1 0 0 1