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**Delivering Community Services in Partnership Policy**

**Purchase of Community Services  
By Public Authorities**

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

**October 2018 Edition**

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## 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](http://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

**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.

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(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)

- (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 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 with, the virus;
- (d) the State Party will not be responsible in any way for any loss, damage or corruption of the electronic copy of the EOI;
- (e) if the electronic copy of the EOI becomes corrupted, illegible or incomplete as a result of transmission, storage, encryption or decryption, then the State Party may request the Respondent to provide another copy of the EOI either electronically or in hard copy or both; and
- (f) if the State Party requests the provision of another copy of the EOI, then the Respondent must:





- (c) refuse to consider or evaluate the Respondent's EOI or terminate the Respondent's participation in the EOI Process if:
  - (i) the Respondent breaches the Process Terms and Conditions; or
  - (ii) the Respondent's EOI is materially incomplete or fails to properly address or meet to the State's satisfaction the Evaluation Criteria or any other requirement contained in the Request for EOI; or
  - (iii) the Respondent fails to meet a direction or requirement of the State Party under the Request for EOI;
- (d) terminate the EOI Process;
- (e) in evaluating the Respondent's EOI have regard to:
  - (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 domain or which is obtained by the State Party through investigations;
- (f) consider and accept any EOI that does not comply with the requirements of the Request for EOI, other than an EOI which:
  - (i) is not lodged before the Closing Time; or
  - (ii) fails to satisfy a Mandatory Requirement; or
  - (iii) fails to meet any requirement when the Request for EOI expressly states that an EOI which fails to fulfil or meet that requirement will be excluded from further consideration;
- (g) allow a Respondent to undergo a Change in Control or other change in structure with or without notifying the other Respondents;
- (h) publish the name of the Respondent; and
- (i) waive any requirement or obligation under the Request for EOI.

The State Party is not required to give reasons for the exercise of any of the State Party's rights in accordance with this clause.

## 4.2

internal costs) directly incurred by the Respondent in preparing and submitting a Request for EOI, and

- (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 the State Party in conducting the EOI Process; and
- (f) the limitations in clauses 5(d) and 5(e) do not apply to a breach of clause 11 or the operation of clause 15.1.

## **6. INFORMATION FROM THE STATE PARTY**

No statement or representation made by or on behalf of the State Party (whether at a Workshop or otherwise) may be relied upon by the Respondent unless the statement or representation is confirmed in writing.

## **7. ADDENDA**

### **7.1 Issue of Addenda**

The Respondent agrees that:

- (a) at any time during the EOI Process the State Party may, for any reason (but without being obliged to do so), amend the 14.02 Tm0 g0 G[c0.004( )] T.

## **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 enquiries or clarification questions of a general nature, together with the State Party's response, to the Respondent and all competing Respondents.
- (b) If the Respondent is of the view that an enquiry or clarification question it proposes to make or ask (whether during a Workshop or otherwise) is not of a general nature, but relates to proprietary aspects of its EOI, the Respondent must identify that enquiry or question as such when making or asking it. If, in the opinion of the State Party:
  - (i) the enquiry or question is not proprietary, the State Party Representative will advise the Respondent who has the option to withdraw the enquiry or question. If the Respondent continues to request a response to that question, the enquiry or question and the State Party's response may be disclosed to all competing Respondents in accordance with clause 8.1(a) above; or
  - (ii) the enquiry or question does relate to proprietary aspects of the Respondent's EOI, the State Party's response to the question will be provided to the Respondent only (and will not be circulated to any competing Respondents).

### **8.2 State Party requests clarification**

The State Party may, but is not obliged to:

- (a) request that the Respondent provide written clarification in respect of any aspect of its EOI; or

- (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 or other information.

**9. RESPONDENT'S REPRESENTATIONS AND WARRANTIES**

By lodging an EOI



- (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



(b)



### **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);
- (c) not place itself in a position which may, or will give rise to a conflict of interest, or a potential conflict of interest during the EOI Process; and
- (d) otherwise notify the State Party promptly in writing upon becoming aware of any actual or perceived circumstances, arrangements or understandings which constitute, or may reasonably be considered 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.

To the extent that the State Party directs the Respondent to take particular action in respect to a conflict of interest, the Respondent must comply with such a direction. If the Respondent is unable or unwilling to comply with any such direction, the State Party may exclude the Respondent from further participation in the EOI Process.



### **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 Party Representative**

The State Party may, at any time and from time to time