

## Part 3 - Terms and Conditions of Tendering

### ***Submission of a Tender***

Submission of a Tender indicates that the Tenderer has read and acknowledges the following conditions:

1. The information provided in the Tender submitted is complete and constitutes an offer to the Workforce Council to provide the Services on the terms set out in the Tender;
2. Each person or organisation identified in the Tender as the Tenderer is jointly and severally liable to the Workforce Council for any offer made in the Tender;
3. The Tenderer has read, understands and agrees to all conditions including without limitation obligations and acknowledgments included in this part;
4. The Tenderer acknowledges that its Tender will remain valid for at least 180 days after submission;
5. The Tenderer has conducted its own inquiries, investigations and appraisal of this tender process, including the services to be provided and any assumptions, uncertainties and contingencies which may affect the Workforce Council's future business;
6. The Tenderer acknowledges and accepts that the Workforce Council may, in its sole and absolute discretion at any time, exercise any rights it has under this tender process or otherwise;
7. The Tenderer through its officers, employees, advisers, agents, and contractors, has not attempted, and will not attempt, to influence improperly or obtain any special advantage from any employee or contractor of the Workforce Council in connection with the assessment of the Tender;
8. The Tenderer, or any party proposed by the Tenderer to provide the Services, has not been named under the *Equal Opportunity for Women in the Workplace Act 1999* (Cth);
9. The Tenderer warrants and undertakes that:
  - a. at the date of submitting the Tender, no conflict of interest, other than a conflict of interest that is declared in the Tender, exists or is likely to arise concerning itself or a related entity affecting the provision of the Services should it be successful with its Tender;

- b. if, before finalisation of the tender process, a conflict of interest arises concerning itself or a related entity, the Tenderer will notify the Workforce Council immediately in writing of that conflict or risk of conflict; and
  - c. it has the resources, or will be able to obtain the resources, likely to be required to properly provide the Services;
10. The Tenderer is solvent, and there is no current or reasonably foreseeable event that is likely to materially affect the solvency of the Tenderer;
11. The Tenderer has, in preparing the Tender, fully complied with the legal terms and conditions set out in this tender process; and
12. The Tenderer confirms that all necessary authorities and approvals have been obtained in order for it to lodge the Tender.

## **GENERAL**

### **No Contractual Obligation**

Nothing in this tender process will be construed to create any binding contract (express or implied) between the Workforce Council and any Tenderer until a written Deed of Standing Offer is entered into with the successful Tenderer(s). Any conduct or statement whether prior to or subsequent to the issuance of this tender process is not, and this tender process is not, and must not be deemed to be:

- o an offer to contract; or
- o a binding undertaking of any kind by the Workforce Council.

### **Conditions on provision of information by the Workforce Council**

All information written, oral or in any other form which has been and may subsequently be made available to Tenderers is provided on the following conditions:

- a) in making a decision to submit or not to submit a Tender or in interpreting this tender process, Tenderers must not rely on:
  - i) any representation, whether orally or in writing, other than as expressed in this tender process or in any addenda to this tender process; or

- ii) other conduct of the Workforce Council, or any of its officers, employees, advisers or agents;
- b) the contents of this tender process are believed to be accurate as at the date of issue of this tender process. The accuracy of any statements, projections, opinions, forecasts or other information contained in this tender process may change;
- c) where any such information relates to future matters, no steps have been taken to verify that the information is based on reasonable grounds, and no representation or warranty, whether express or implied, is made by the Workforce Council, or any of its officers, employees, advisers or agents that the statements contained in this tender process are accurate or will be achieved;
- d) except so far as liability under any statute cannot be excluded and then only to the extent required by statute, neither the Workforce Council, nor its officers, employees, advisers and agents will in any way be liable to any person or body for any loss, damage, cost or expense of any nature arising in any way out of or in connection with the statements, opinions, projections, forecasts or other representations, actual or implied, contained in or omitted from this tender process or by reason of any reliance thereon by any person or body; and
- e) Tenderers must seek their own professional advice as appropriate.

### **Responsibility of Tenderers to Inform Themselves**

It is the sole responsibility of Tenderers to obtain all information necessary and relevant to a Tender response to this tender process.

All Tenderers are deemed, and acknowledge accordingly, to have:

- a) examined this tender process, any documents referred to in this tender process, and any other information made available in writing by the Workforce Council to Tenderers for the purpose of tendering;
- b) sought and examined all further information relevant to the risks, contingencies, and any other circumstances which have an effect on the Tenderers' Tender and which is obtainable by making enquiries; and
- c) satisfied themselves as to the correctness and sufficiency of their Tender including their tendered prices.

Should a Tenderer find any discrepancy, inconsistency, error or omission in this tender process, the Tenderer must notify the Workforce Council at: [pscqtender@workforce.org.au](mailto:pscqtender@workforce.org.au) as soon as reasonably practicable.

### **Reservation of Rights of the Workforce Council**

In addition to and without limiting its other rights in this tender process, at law or otherwise, the Workforce Council may, at its sole and absolute discretion and at any stage of the tender process, do all or any of the following:

- a) amend this tender process;
- b) suspend, postpone or cancel this tender process or any part of it at any time where:
  - i) it is in the public interest;
  - ii) no Tenderer is fully capable of undertaking the draft Deed of Standing Offer; or
  - iii) no Tenderer represents value for money,
  - iv) and the Workforce Council will not be liable for any loss, damage or cost caused to, or incurred by, Tenderers by such an event;
- c) seek amended Tenders or call for new Tenders;
- d) not accept the lowest price submitted;
- e) negotiate with one or more Tenderers in respect of fees, contract terms or any other matter without prior notice to any other Tenderer;
- f) terminate any negotiations being conducted at any time with any Tenderer for any reason;
- g) request clarification from any Tenderer or anyone else on any aspect of a Tender;
- h) provide additional instructions, information or clarification;

- i) allow or not allow another entity to take over a Tender in substitution for the original Tenderer;
- j) consider any information in its evaluation of Tenders;
- k) shortlist Tenders; and
- l) if the Workforce Council considers that no Tender offers value for money in accordance with this tender, to terminate the tender process.

The Workforce Council will not be liable, or in any way responsible, for:

- a) any losses, costs, expenses, claims or damages resulting from the exercise of any of the Workforce Council's rights referred to above;
- b) any failure to inform a potential Tenderer of a change relating to this tender process that would have been obvious from visiting the PSCQ website or any other matter arising by the Workforce Council exercising its rights above; or
- c) any cost, expense, loss, claim or damage arising out of, or in connection with, a Tenderer's participation in this tender process including, without limitation, the preparation and submission of a Tender or the preparation and negotiation of Deed of Standing Offer to provide the Services.

### **Contact Officer for Tender Inquiries**

The point of contact for all matters concerning this tender process is only via the following email: [pscqtender@workforce.org.au](mailto:pscqtender@workforce.org.au)

Any enquiries or requests for clarification relating to this tender process must be made in writing at the above email address.

All written enquiries or requests for clarification received, together with the Workforce Council's written response, will be posted on the PSCQ website with the original tender documentation. The origin of all such questions will not be identified.

## ***SUBMISSION OF TENDERS***

### **Notices**

In the event that the Workforce Council elects to vary or supplement this tender process or change the Conditions of Tender, it will make reasonable efforts to inform Tenderers.

Tenderers may be informed by notices and other information issued as addenda posted on the PSCQ website, along with the original tender process.

It is in the interest of Tenderers to check the PSCQ website for this tender process and collect any addenda which may have been posted.

The Workforce Council will accept no responsibility if a Tenderer fails to become aware of any addendum which would have been apparent from a visit to the PSCQ website for this tender process.

### **Electronic Lodgement**

Tenders must be lodged electronically with the Workforce Council and in accordance with the tender lodgement procedures set below.

Except where permission is sought and granted by the Workforce Council, Tenders lodged by any other means, including by hand or facsimile, will not be considered.

### **Preparing to Lodge a Tender**

#### ***Virus Checking***

In submitting their Tenders electronically, Tenderers warrant that they have taken reasonable steps to ensure that Tenders are free of viruses, worms or other disabling features which may affect the Workforce Council computing environment.

Tenders which contain viruses, worms or other disabling features may be excluded from the evaluation process.

### **Tender File Formats, Naming Conventions and Sizes**

Tenderers must lodge their Tender in accordance with the requirements set out for file format/s and file sizes. Failure to comply with any of these requirements may result in the Workforce Council, at its absolute discretion eliminating the Tender from consideration.

Unless otherwise agreed by the Workforce Council in writing, Tenders should be lodged in Word format, using the templates provided on the PSCQ website.

Tender files must not exceed a combined file size of 5 megabytes per email.

If a Tender consists of multiple emails, due to file size, Tenderers should ensure that they make clear how many emails are submitted.

Tenders should be completely self-contained. No hyperlinked or other material may be incorporated by reference.

### **Incomplete Tenders and Corrupted Files**

Where a Tenderer has problems sending email to the Workforce Council due to a problem with the Workforce Council's computing environment:

- a) the Tenderer should notify the Workforce Council; and
- b) the Tenderer agrees its Tender will only be accepted if it is lodged in accordance with alternative arrangements advised to the Tenderer in writing by the Workforce Council.

Incomplete Tenders (including those with electronic files that cannot be read or decrypted) and Tenders which the Workforce Council believes to potentially contain any virus, malicious code or anything else that might compromise the integrity or security of the Workforce Council's computing environment, may be excluded from evaluation.

## **Security**

Tenderers acknowledge that:

- a) lodgement of their Tender in accordance with these Conditions of Tender is entirely their responsibility; and
- b) the Workforce Council will not be liable for any loss, damage, costs or expenses incurred by Tenderers or any other person if, for any reason, a Tender or any other material or communication relevant to this tender, is not received, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised.

## **Period of Validity of Tenders**

Tenders submitted in response to this tender process must remain open for acceptance by the Workforce Council for at least 180 days from the date of submission of the Tender.

## **Ownership of the tender process and Tender Documents**

All documents comprising this tender process, including all its parts, appendices, attachments, schedules, annexures, variations and addenda, remain the property of the Workforce Council, but each Tenderer is permitted to use them for the purpose only of compiling its Tender and, where relevant, for negotiating the terms of a Deed of Standing Offer with the Workforce Council.

All copies of the Tender submitted to the Workforce Council become the property of the Workforce Council. The Workforce Council may replicate the Tender documents and use them for the purposes of the tender process including Tender evaluation, the preparation of any Deed of Standing Offer to be entered into by the Workforce Council and audit requirements.

## **Illegibility**

Tenders which are illegible at the time of submission may, at the sole and absolute discretion of the Workforce Council, be excluded from further evaluation.

## **Unintentional Errors of Form**

If, at any time, the Workforce Council considers that there are unintentional errors of form in a Tender, the Workforce Council may, in its sole and absolute discretion, allow the Tenderer to correct or clarify the error, but will not permit any material alteration or addition to the Tender.

If the Workforce Council provides any Tenderer with the opportunity to correct unintentional errors of form, it will provide the same opportunity to all other Tenderers who are in the same position.

## ***TENDER CONTENT***

### **Conditions for Participation**

A Tenderer that does not meet the conditions for participation will be excluded from further participation in this tender process, and any Tender submitted by that Tenderer will not be evaluated.

Tenderers should refer to page 1 of Part 2 for the conditions for participation.

### **Minimum Content and Format Requirements**

All Tenders must be submitted electronically using the Tender Response Forms provided.

A Tenderer that does not meet the minimum content and format requirements will be excluded from further participation in this tender process, and any Tender submitted by that Tenderer will not be evaluated.

### **Use of English Language in Tenders**

All Tenders, including any additional documents in support thereof, must be in the English language.

### **Acceptance of Tenders**

Neither the lowest priced Tender, nor any Tender, will necessarily be accepted by the Workforce Council.

### **Negotiations and Best and Final Offer (BAFO)**

Any acceptance of a Preferred Tenderer(s) may be subject to negotiations and/or BAFO at the sole and absolute discretion of the Workforce Council. The Workforce Council may engage in parallel negotiations with more than one Preferred Tenderer.

In any negotiation and/or BAFO process, the Workforce Council may require the submission of any written documents or information that may be required for the purposes of the Deed of Standing Offer to be entered into under this tender process.

Without limiting its other rights under this tender process, if, in the sole and absolute opinion of the Workforce Council, during final negotiations the preferred Tenderer has retracted, or attempts to retract, agreements under which material business, financial, technical and legal issues were resolved during negotiations, the Workforce Council may reject the preferred Tenderer's Tender, discontinue negotiations with that Tenderer, re-enter negotiations with other Tenderers (including or excluding the Preferred Tenderer), and exercise any other right the Workforce Council has under this tender, at law or otherwise.

### **Debriefing of Unsuccessful Tenderers**

Upon the written request of any unsuccessful Tenderer, and shortly after the entering into any Deed of Standing Offer with the successful Tenderer(s), the Workforce Council will provide a debriefing to the unsuccessful Tenderer.

## ***GENERAL CONDUCT OF TENDERS***

### **Collusive Behaviour and Improper Conduct in Tendering**

Tenderers and their officers, employees, agents and subcontractors must not engage in any collusive tendering, anti-competitive conduct or any similar behaviour with any other Tenderer or any other person in relation to the preparation or submission of Tenders.

The Tenderer warrants that neither the Tenderer nor any of its officers, employees, agents or subcontractors has attempted or will attempt to improperly influence an employee, adviser or agent of the Workforce Council in connection with the evaluation of Tenders nor approach any employee, adviser or agent of the Workforce Council concerning the tender process, other than via the email address [pscqtender@workforce.org.au](mailto:pscqtender@workforce.org.au).

In addition to any other remedies available under any law or any contract, the Workforce Council reserves the right, in its sole and absolute discretion, immediately to reject at any time any Tender submitted by a Tenderer that is engaging or has engaged in any collusive tendering, anti-competitive conduct or any other similar conduct in relation to the preparation or submission of Tenders or which does not comply with this condition.

### **Tenders by a Consortium and Joint Tenders**

The Workforce Council will consider and admit to evaluation Tenders submitted by a consortium in accordance with this tender process only if all the following conditions and requirements are met to the full satisfaction of the Workforce Council:

- a) the consortium will contract with the Workforce Council as one separate legal entity, or with one member of the consortium clearly stated as the lead entity;
- b) the Tender clearly specifies the details of all members of the consortium; and
- c) a single point of contact for the consortium, and all project management and relationship management arrangements, is specified.

Further, the Workforce Council expects that, in the event of a consortium being offered a Deed of Standing Offer as part of the panel of providers, the lead entity will establish contracts or arrangements with all other members of the consortium that clearly define the working

relationship with respect to service provision to the Workforce Council, the terms of which will mirror the Deed of Standing Offer which is established between the Workforce Council and the lead entity.

### **Alternative Tenders**

The Workforce Council may consider a Tender that does not comply with the Service Delivery Requirements if the Tenderer:

- a) proposes a solution which satisfies the functionality of the Service Delivery Requirements;
- b) satisfies the minimum content and format requirements, any conditions for participation and any essential requirements specified in this tender;
- c) is fully capable of providing the Services in accordance with the Deed of Standing Offer and meets the Workforce Council's business requirements;
- d) specifies each instance of change (including effect on the Tenderer's proposed prices); and
- e) states the reasons for each instance of change and how they may benefit the Workforce Council.

Failure to provide this information may result in the Workforce Council not considering the alternative Tender.

### **Conflict of Interest**

Tenderers warrant that, at the time of submitting their Tenders, no conflict of interest exists, or is likely to arise, which would affect the performance of their obligations under any Deed of Standing Offer entered with the Workforce Council arising out of this tender process.

In the event of a conflict of interest being identified the Workforce Council may, in its sole and absolute discretion, exclude the Tender from further consideration.

### **Tenderer's Confidential Information**

The Workforce Council will treat as confidential any information provided by Tenderers prior to the award of Deed of Standing Offer.

Once a Deed of Standing Offer has been awarded, the Workforce Council will not keep such information confidential if it was provided by the successful Tenderer unless:

- a) the specific information is by its nature confidential;
- b) the Tenderer requests that specific information should be kept confidential; and
- c) the Workforce Council agrees to that request.

The obligation of confidentiality does not apply if the Confidential Information:

- a) is disclosed by the Workforce Council to its advisers or employees solely in order to consider the Tender responses;
- b) is disclosed by the Workforce Council to the Minister responsible for the program under which the Professional Support Coordinator Queensland project is funded;
- c) is disclosed by the Workforce Council in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- d) is authorised or required by law to be disclosed; or
- e) is in the public domain otherwise than due to a breach of the above conditions.

To enable the Workforce Council to consider whether it agrees to keep specific information confidential, Tenderers must include in the Tender Response Form – Confidential Information any request that information is to be treated as confidential in the event that Deed of Standing Offer is entered into with it, specifying the reasons why it is necessary to keep the information confidential.

The Workforce Council will consider any request made in this manner and will inform the Tenderer whether or not the Workforce Council, in its sole and absolute discretion, agrees to the request and the terms under which it agrees. The Workforce Council will agree to keep confidential any specific information having regard to the matters covered by the Commonwealth's Guidance on Confidentiality of Contractors' Commercial Information.

## **Conducting Security, Probity and Financial Checks**

The Workforce Council may, at its sole and absolute discretion, conduct such security, probity and/or financial checks in relation to the Tenderer, its officers, employees, agents and subcontractors or related entities or consortium members, their officers, employees, agents and subcontractors as it deems necessary for the purpose of evaluating Tenders or any other stage of this tender process.

## **Compliance with Laws and Commonwealth Policies**

In the tendering process, all Tenderers undertake to comply with all statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time, including in particular but not limited to the *Crimes Act 1914* (Cth); *Racial Discrimination Act 1975* (Cth); *Sex Discrimination Act 1984* (Cth); *Disability Discrimination Act 1992* (Cth); *Workplace Relations Act 1996* (Cth); *Equal Opportunity for Women in the Workplace Act 1999* (Cth); *Privacy Act 1988* (Cth); *Occupational Health and Safety Act 1991* (Cth); *Safety, Rehabilitation and Compensation Act 1988* (Cth); and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

## **Occupational Health and Safety Requirements**

The Workforce Council requires that all Tenderers comply with Occupational Health and Safety (OH&S) principles, practices and procedures.

## **Goods and Services Tax (GST)**

All contracts that the successful Tenderer or other third party suppliers enter into in relation to the Deed of Standing Offer are to include GST in their pricing (unless the supply is GST-free or input taxed);

All estimates of charges for the Deed of Standing Offer are to include GST and Tenderers are to indicate (in brackets) the total amount of GST included in the estimates; and

Invoices for Services issued by the successful Tenderer or other third party must comply with the GST legislation requirements for a 'tax invoice' in order to obtain payment from the Workforce Council.

Tenderers should obtain their own tax advice.

## **Electronic Payment**

The Workforce Council prefers to effect payment to its suppliers via electronic funds transfer direct to suppliers' bank accounts. Unless exceptional circumstances exist where suppliers have limited access to banking facilities in remote areas, the Workforce Council will only contract with Tenderers on the basis that all payments made pursuant to the Deed of Standing Offer will be made by the Workforce Council through electronic funds transfer directly into that Tenderer's bank account.

## **Applicable Law and Court Jurisdiction**

The laws in force in Queensland apply to this tender.

All Tenderers agree to submit to the exclusive jurisdiction of the courts of the Queensland.

## Definitions and Interpretations

### Definitions

Unless otherwise defined in this tender, capitalised terms have the same meaning as in the Draft Deed of Standing Offer.

In this tender, unless the contrary intention appears:

**Approved Personnel** means the members of the staff or employees of the Contractor as well as the Contractor's subcontractors who are approved in writing by the Workforce Council to perform the Services under the Deed of Standing Offer.

**Confidential Information** has the same meaning as in the Draft Deed of Standing Offer.

**Contract Manager** means that person whom the Workforce Council designates as its Contract Manager at Item 13 of Schedule 10 of the Draft Deed of Standing Offer.

**Contractor** means a person with whom the Workforce Council executes an Official Order under the Deed of Standing Offer.

**Deed of Standing Offer** means the deed (if any) entered into by the Workforce Council and the successful Tenderer(s) substantially in the form of the Deed of Standing Offer in **Part 4** of this tender.

**Draft Deed of Standing Offer** means the Draft Deed of Standing Offer set out in **Part 4**.

**Evaluation Criteria** means the criteria set out in Part 2.

**Official Order** means the official document issued by the Workforce Council under a Deed of Standing Offer to place a specific order for Services, which creates a separate contract between the parties for delivery of those Services.

**Panelist** means a person with whom the Workforce Council enters into the Deed of Standing Offer.

**Preferred Tenderer** means the Tenderer or Tenderers selected by the Workforce Council as preferred at the completion of the evaluation process.

**Tender** or **tender** means this tender process, including all Parts, Schedules, Attachments, Annexures and/or Appendices (if any) and any variations and addenda issued.

**Services** means all or, as the context requires, any part of the services to be provided by the successful Tenderer under the Deed of Standing Offer, as amended from time to time, including the services described in this tender.

**Service Delivery Requirement** means the detailed requirements of the Workforce Council as set out in **Part 1** of this tender.

**Tender** means any tender submitted in response to this tender.

**Tenderer** means any entity that submits or considers submitting a Tender.

**Term** means the length or duration of the draft Deed of Standing Offer.

## **Draft Deed of Standing Offer**

### **Form of draft Deed of Standing Offer**

Subject to any issues of partial or non-compliance specified by the Tenderer in its Statement of compliance, the Workforce Council intends to enter into a deed with the successful Tenderer (if any) in the form of the draft Deed of Standing Offer, Part 4 of the tender documentation, available on the PSCQ website.