

Conditions of Tendering

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Conditions of Tendering

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This section includes notices to tenderers.

The Conditions of Tendering section does not form part of the Contract.

1 General

1.1 Summary of the tendered Works

Cabonne Shire Council (CSC) invites submissions from qualified High Voltage (HV) construction contractors to complete the HV works required for connecting the CSC solar farm and Battery Energy Storage System (BESS) to the Essential Energy distribution network.

The appointed contractor will be responsible for all HV construction works between the Eugowra Sewage Treatment Plant (STP) solar farm and BESS and the Essential Energy Payten's Bridge Zone Substation (ZSS).

Tenderers must be accredited as Level 1 Service Providers for the construction of distribution network assets in New South Wales, as recognised by the NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW).

All respondents must demonstrate relevant qualifications and proven experience working within the Essential Energy distribution network.

Refer to 6 Scope of Works ESF HV Construction for more detail of the proposed Works.

1.2 Legal framework

These Conditions of Tendering form part of the Request for Tenders (RFT) issued for the provision of the tendered Works. The following conditions apply to this RFT:

- by issuing this RFT the Principal does not intend to create any contract or other legal relationship with a Tenderer;
- this RFT is not an offer by the Principal which is capable of acceptance;
- no binding Contract or any other legal relationship will be formed between the Principal and the successful Tenderer or any Tenderer unless and until the Principal accepts a tender by written notification or signed agreement and
- the Principal has no liability for any tendering costs incurred by a Tenderer.

Refer to clause - **Acceptance of Tender** for further information.

1.3 Tenderer's responsibility

The RFT documents do not purport to contain all relevant information in relation to the Contractor's activities or the Works, and are provided solely on the basis that the Tenderer will be responsible for:

- making its own assessment of the matters referred to in the RFT documents; and
- satisfying itself as to the correctness and sufficiency of its Tender for the due and proper performance and completion of the work under the Contract in accordance with the RFT documents.

Refer to General Conditions clause 7 - **Site Conditions** with regard to information provided by the Principal concerning the Site and the responsibilities of the Tenderer and Contractor.

The Tenderer is responsible for reviewing the RFT Documents (including all addenda) provided by or on behalf of the Principal to ensure that it has a complete copy of all documents.

Tenderers must promptly notify the Contact Person in accordance with these Conditions of Tendering if an error, omission, discrepancy, ambiguity or inconsistency is identified in, or between any of the RFT Documents.

1.4 Requests for information and clarifications

All communications with the Principal and all requests for information or clarification with regard to this Request for Tenders (RFT) must be made through the Principal's online forum.

Requests for information or clarification will be directed to the nominated Contact Person. The Contact Person will respond in writing and may distribute both the enquiry and the response to all tenderers.

Tenderers should not approach the Contact Person directly unless requested to do so or where an urgent response is required for an inspection date or similar.

Tenderers must not approach any other Council officers or elected members with regard to this RFT.

If a Tenderer considers the subject matter of an enquiry to be confidential, it must clearly indicate this in its request. The Principal, in its sole discretion, shall determine whether the matter raised is of a confidential nature. If the Principal does not consider the subject matter of the enquiry to be of a confidential nature, it shall give the Tenderer the opportunity to withdraw the enquiry.

The Principal reserves the right not to respond to enquiries made within 5 Business Days prior to the close of tenders.

The Principal's online forum is: Vendorpanel

Access to the Principal's online forum is by web address:

<http://www.vendorpanel.com.au/cabonne/tenders>

The Contact Person is:

Name:

Telephone number:

E-mail address:

1.5 Termination of Tender Process

Where, due to a change in circumstances, the Principal decides that it is not in the Principal's interest to proceed, it reserves the right, in its absolute discretion, to terminate the tender process for this RFT by notice to tenderers utilising the same method as was used to invite tenders. No liability for any tendering costs incurred by tenderers arises due to the exercise of the Principal's right to terminate the tender process.

2 Tenderer Eligibility

2.1 Acceptable Legal Entities

The Principal contracts only with recognised and acceptable legal entities. The Principal does not contract with firms under any form of external administration. Any tender submitted by an unincorporated business such as a sole trader, partnership, or business name must identify the legal entity that proposes to enter the contract.

The Principal will not award this Contract to a Tenderer that is a trustee if the Tenderer cannot demonstrate that it will be able to meet all of the requirements of the contract, including the financial assessment requirements, for the entire contract period.

2.2 Quality management

The Principal may elect to pass over a Tender from a Tenderer that does not demonstrate the capacity to systematically plan and manage the quality of its work in accordance with the *NSW Government Quality management guidelines (Construction Procurement)* (Edition 4) which are available on the buy.nsw website at <https://buy.nsw.gov.au/categories/construction>

Submit when requested the information identified in Tender Schedules - **Schedule of Quality Management Information.**

2.3 Work health and safety management

Tenderers must demonstrate their capacity to manage work, health and safety (WHS) in accordance with the *NSW Work Health & Safety management guidelines (for Construction Procurement) (Edition 6) (WHSM Guidelines)*. These *Guidelines* are available on the buy.nsw website at: <https://buy.nsw.gov.au/categories/construction>

Submit with the Tender Form, the completed Schedule and the information required by Tender Schedules - **Schedule of WHS Management Information - PART A**.

Submit when requested, the completed Schedule and the information required by Tender Schedules - **Schedule of WHS Management Information – PART B**

2.4 Environmental management

Tenderers must demonstrate their capacity to manage environmental matters in accordance with the *NSW Government Environmental management guidelines (Construction Procurement) (Edition 4) (EM Guidelines)* available on the buy.nsw website at: <https://buy.nsw.gov.au/categories/construction>

Submit with the Tender the information identified in Tender Schedules - **Schedule of Environmental Management Information – Part A**.

2.5 Financial assessment

By submitting a tender for this RFT, the Tenderer agrees that the Principal may engage private sector consultants to financially assess tenderers. Financial details of tenderers may be obtained by an external Financial Assessor for assessment. Financial Assessors have an obligation to safeguard the financial details obtained.

The main criteria considered in financial assessment of tenderers are:

- Net Tangible Assets (total assets, excluding any assets of company directors, less total liabilities less intangible assets);
- Current Ratio (ratio of current assets to current liabilities); and
- Working Capital (current assets less current liabilities).

The Principal considers a Tenderer meeting the following financial indicators, with no other significant detrimental financial characteristics, to be financially satisfactory in respect of its Tender:

- Net Worth exceeds 5% of the initial Contract Price;
- Current Ratio exceeds 1; and
- Working Capital exceeds 10% of the initial Contract Price.

Deviations from the above indicators will not necessarily prevent the Principal from considering any tender.

The Principal may elect to pass over a Tender from a Tenderer if any of the above financial assessment indicators are below a threshold acceptable to the Principal. The Principal may, at its discretion, also consider other actions where defects in the financial assessment may be able to be rectified.

Submit, when requested by the Financial Assessor or Principal, the Financial Assessment information shown in Tender Schedules - **Schedule of Financial Assessment Information**.

3 Contract details

3.1 General Conditions of Contract

The RFT documents include a copy of the MW21-LG General Conditions of Contract.

3.2 Insurance

Works Insurance

The Contractor must arrange insurance of the Works (and any temporary works) and pay all premiums in accordance with General Conditions of Contract clause - **Insurance**.

Public Liability Insurance

The Contractor must arrange insurance for public liability and pay all premiums in accordance with General Conditions of Contract clause - **Insurance**.

Asbestos liability insurance

The Contractor must arrange any asbestos related insurance required by law. Any other asbestos related insurance is at the discretion of the Contractor. The Contractor will not be entitled to any additional payments for asbestos related insurance. The Principal does not require the Contractor to hold any particular Asbestos Liability Insurance under General Conditions of Contract clause – **Insurance**.

Other Insurance

Unless otherwise advised by the Principal, the Contractor must arrange and pay all premiums for all other insurance required under General Conditions of Contract clause – **Insurance**.

For professional indemnity insurance, a Certificate of Currency or evidence of the ability to obtain the required insurance, such as a letter from a broker or insurer, may be required as a condition of acceptance of the tender.

4 Current policies

4.1 Disclosure of Tender and Contract information

Details of this tender process and any contract awarded as a result of the tender process may be disclosed in accordance with the *Government Information (Public Access) Act 2009* (NSW).

4.2 Exchange of information by the Principal

By submitting a Tender, the Tenderer authorises the Principal to gather, monitor, assess, and communicate to other State and Commonwealth Government agencies or Local Government Authorities information about the Tenderer's financial position and its performance in respect of any contract awarded as a result of the tender process. Such information may be used by those agencies or authorities in considering whether to offer the Tenderer future opportunities for work.

4.3 Security and Ownership of Documents

Ownership of submitted Tender Documentation

All documents, materials and information submitted as part of or in support of a tender will become the property of the Principal.

4.4 Dealing with Modern Slavery

The Tenderer's attention is drawn to the requirements of the Modern Slavery Act NSW (2018) which requires that reasonable steps be taken to ensure that goods and services procured by and for government agencies are not the product of modern slavery.

Tenderers must demonstrate that they understand Modern Slavery and will implement processes and procedures to identify and manage the risks of Modern Slavery.

Refer to the following site for further information on the Reasonable Steps that should be taken to deal with modern slavery:

<https://dcj.nsw.gov.au/legal-and-justice/our-commissioners/anti-slavery-commissioner/due-diligence-and-reporting>

Submit with the Tender the completed Tender Schedules - **Schedule of Compliance for dealing with Modern Slavery**.

A Tender will not be accepted from a Tenderer that does not provide the completed Schedule which includes a submission and a declaration by the Contractor.

4.5 Unconditional undertakings - approved institutions

For the purpose of giving unconditional undertakings, banks, building societies, credit unions and insurance companies listed by the Australian Prudential Regulation Authority (APRA) as being regulated by the APRA are acceptable. Lists appear at the APRA website at

<https://www.apra.gov.au/list-of-registered-financial-corporations>

5 Further information

5.1 Addenda to RFT Documents

If, as a result of:

- a request for clarification from a Tenderer;
- the need for a correction or the resolution of a *Fault* (i.e. ambiguity, inconsistency or discrepancy);
- a change in the Principal's requirements;
- a change in a date or deadline related to the tender process; or
- for any other reason,

the Principal issues an instruction amending the RFT documents or tender process, the instruction will be issued in writing to all tenderers in the form of an Addendum, which becomes part of the RFT documents.

Written Addenda issued by the Principal are the only recognised explanations of, or amendments to, the RFT documents. The Principal will not be bound by any verbal advice or information given by any officer of Council or any third party in respect of this tender, unless it has been confirmed in writing and included in the RFT documents.

5.2 Site information

The Principal may provide geotechnical or other information concerning the Site. Some Site information, including reports and investigations, may not form part of the Contract.

Refer to Preliminaries clause – **Site** for Site related contract requirements and for other site activities and contracts (if any) which may affect this site.

5.3 Site access restrictions

Tenderers and their agents or representatives must:

- apply to the Principal in accordance with clause - **Requests for information and clarifications** to obtain permission to inspect the Site at least 72 hours before access to the Site is required.

6 Preparation of Tenders

6.1 Price Criteria Information

Complete all Schedules requiring prices or rates. In particular, ensure that:

- all prices and rates include GST unless expressly stated otherwise;
- all prices and rates include appropriate allowances for overheads and profit; and
- the 'Total (Lump Sum tendered including GST)' in the Tender Schedules - **Schedule of Prices – Lump Sum** is correct and is the same amount as the 'Contract Price' shown in the Tender Form.

Refer to the Schedule of Special Tendering Conditions with regard to the application of other price criteria, if any.

6.2 Non-Price Criteria Information

Mandatory Participation Criteria

Mandatory Participation Criteria must be met by the Tenderer. Failure to satisfy the Mandatory Participation Criteria may result in the relevant Tender being passed over.

Complete and submit with the tender the information shown in Tender Schedules - **Schedule of Mandatory Participation Criteria Information**.

Weighted Non-Price Criteria

Refer to Conditions of Tendering - **Evaluation of Tenders** for information on the evaluation of weighted non-price criteria.

Complete and submit with the tender the information shown in Tender Schedules - **Schedule of Weighted Non-Price Criteria Information**.

Other Non-Price Criteria

The Principal requires information about the Tenderer. Complete and submit with the tender the information shown in Tender Schedules - **Schedule of Non-Price Criteria Information**.

6.3 Alternative Tenders

Alternative tenders will not be considered.

6.4 Qualifications and Departures

Qualifications and departures include any condition, offer, interpretation, assumption or proposal of any nature appearing on any documents submitted with or within the Tender which constitute any variation of, omission from, or addition to this RFT.

Where the Tenderer considers a qualification or departure to its Tender is appropriate or wishes to clarify an assumption with respect to the RFT document, it may discuss its concern with the Contact Person using the on-line forum, where nominated, and/ or utilise the option, if available, to submit an alternative tender.

Refer to Conditions of Tendering - **Evaluation of Tenders** for information on the evaluation of qualifications and departures.

Complete and submit with the tender the information shown in Tender Schedules - **Schedule of Qualifications and Departures Information**.

7 Submission of Tenders

7.1 General

Tenders may only be submitted by the methods described in this Conditions of Tendering clause - **Submission of Tenders**. Tenders submitted by other means, including by email or given by hand to a Council representative or employee will not be considered.

7.2 Documents to be submitted

Submit the documents listed in parts A and B below, in accordance with the respective instructions.

Do not change the text on the Tender Form or Tender Schedules, other than to insert the required information.

Do not include with tenders any brochures, advertising, product or company information or marketing brochures or presentations other than information expressly requested in the Tender Schedules.

Failure to meet the requirements of this clause may result in the Tender being passed over.

Part A: Documents to be Lodged at close of Tenders

Complete and lodge, by the date, time and method stated in the tender advertisement, invitation and/ or the Timetable in the Tender Document title page, as applicable, the following documents and information:

- **Tender Form**
- **Schedule of Prices – Lump Sum**
- **Schedule of Qualifications and Departures Information**
- **Schedule of Mandatory Participation Criteria Information**
- **Schedule of Weighted Non-Price Criteria Information**
- **Schedule of WHS Management Information: Part A**
- **Schedule of Environmental Management Information: Part A**

Any tender that is not received in full (for Part A documents) at close of tenders may be passed over.

Acknowledge on the Tender Form, by listing the Addendum numbers, that the tender allows for all Addenda issued.

If more than one tender is lodged, mark each tender clearly as to whether it is a copy, an alternative tender, or a tender superseding another submission.

Part B: Documents to be Submitted When Requested:

Complete and submit, by the date, time and method stipulated in any request, the following Tender Schedules, marked 'Submit When Requested', and any other documents and information requested by the Principal to allow further consideration of the Tender:

- **Schedule of Financial Assessment Information**
- **Schedule of Quality Management Information**
- **Schedule of WHS Management Information: Part B**
- **Schedule of Environmental Management Information: Part B**
- **Schedule of Compliance for Dealing with Modern Slavery**

7.3 Tenders submitted electronically

Legal status

Tenders submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW) and shall be treated as confidential documents. The tenders will be given no lesser level of confidentiality, probity and attention than tenders submitted by other means, where permitted.

Tenderers should review the terms and conditions of the nominated system prior to uploading their tender. Lodgement of a tender electronically is evidence of a Tenderer's acceptance of any conditions shown on the website of the nominated electronic tendering system.

General

Tenderers must not change existing text in electronic tender forms other than to insert required information.

Tenderers who experience technical difficulties in lodging their tenders should utilize the support provided by the nominated electronic tendering system website.

Tender files must be checked by a reputable virus scanning application prior to submission and be found to be free from virus malicious code or other properties (including executable code) that may compromise the Principal's IT environment.

It is the Tenderer's responsibility to submit a tender that is complete and in an uncorrupted format. The Principal may decline to consider for acceptance, tenders that cannot be effectively evaluated because they are incomplete or corrupt.

Tenders received via electronic transmission, other than through the nominated electronic Tendering system site, will not be considered.

Tenders must be submitted electronically using the Principal's nominated electronic tendering system. Tenders submitted by other means will not be considered.

Tenders submitted electronically must be submitted electronically using the Principal's nominated electronic tendering system:

The Principal's tendering system is: Vendorpanel

Access to the Principal's tendering system is via:

<http://www.vendorpanel.com.au/cabonne/tenders>

Login to the tendering system and search for this RFT by name and number.

Please note that electronic lodgement must be "fully complete" by the nominated time for the close of tenders as the electronic link is programmed to terminate at this time.

Electronic Format for Submissions

Tenderers must comply with the conditions of the nominated system with regards to acceptable file types and file sizes. Unless otherwise required by the nominated electronic tendering system:

- tenders submitted electronically must be in a file format that can be read, formatted, displayed and printed by Microsoft Word 2021, or any format required by the RFT;

File Compression

Unless otherwise required by the nominated electronic tendering system, Tenderers may compress electronic tenders in any format that can be decompressed by WinZip. Tenderers must not submit self-extracting (*.exe) zip files.

7.4 Late Tenders

In accordance with the *Local Government (General) Regulation 2021*, a late tender will not be considered unless the Tenderer satisfies the Principal that the Tender was lodged in sufficient time for the Tender to have been received by the closing date and time.

8 Procedures after closing of Tenders

8.1 Evaluation of Tenders

The names of the tenderers who submitted tenders by the due closing date and time will be published on the Principal's website.

Tenders will be evaluated in accordance with the *Local Government (General) Regulation 2021*. Tenders will be evaluated on the criteria listed or referenced in these Conditions of Tendering.

In evaluating tenders, the Principal may take into consideration relevant factors including, but not limited to: whole of life costs; innovation; delivery time; quality offered; previous performance; experience; capability; work health and safety performance; environmental management performance; reasonable steps in dealing with modern slavery; quality management capability; community relations; value adding including economic, social and environmental initiatives; and conformity.

Weighted Evaluation Criteria

Tenders will be assessed using a weighted scoring process based on information provided with the Tender. The ratio of price to non-price criteria will be: 60 : 40

The non-price criteria (in priority order with most important listed first) will be:

Weighted Non-Price Criteria

- Recent Experience and Track Record
- Capability to Undertake the project.
- Proposed Timeframe
- Local Engagement – Employment & Subcontractors

The Principal may elect to pass over a Tender from a Tenderer with an assessed score on any of the above non-price criteria that is below a threshold acceptable to the Principal.

Dealing with Modern Slavery

The Tenderer's submission will be evaluated with reference to the criteria included in Tender Schedules - **Schedule of Compliance for Dealing with Modern Slavery**.

Qualifications, Omissions and related issues

The Principal may assess the value of any qualification in any Tender, without reference to the Tenderer, and compare tenders on the basis of the Principal's assessed valuation.

The Principal may treat any detail required by the RFT documents which is omitted, illegible or unintelligible as failing to fulfil the relevant requirement.

Communications with Tenderers

The Principal may seek clarification from a Tenderer regarding information contained in its Tender and may do so without notification to any other Tenderer.

A Tenderer may be invited to a one-on-one evaluation conference in order to review and clarify its Tender and to enable the Principal to interview key personnel identified in the Tender.

8.2 Variation of Tender

Before the Principal accepts any tender, a Tenderer may vary its tender by:

- providing the Principal with further information by way of explanation or clarification; or
- correcting a mistake or anomaly.

Such a variation may be made either at the request of:

- the Principal, or

- the Tenderer but only if, in the circumstances, it appears reasonable to the Principal to allow the Tenderer to provide the further information or correction.

The Principal will not consider a variation of a Tender if the variation would substantially alter the original Tender.

If a Tender is varied in accordance with this clause, the Principal will notify, in writing, all other tenderers that have the same or similar characteristics as the varied Tender and provide them with the opportunity of varying their tenders in a similar way.

8.3 Acceptance of Tender

The Principal will:

- accept a tender by written notification;
- publish the name of the successful tenderer and, if required, the amount of the accepted tender on the Principal's website;
- publish information in accordance with Government Information (Public Access) Act 2009 GIPA}; and
- notify tenderers whose tenders were not accepted that their tenders were unsuccessful; or
- if none of the tender submissions were accepted, a notice to that effect.

The Principal may accept tenders that do not conform strictly with all requirements of the RFT documents.

The Principal is not bound to accept the lowest or any tender. Tenders which do not comply with:

- a requirement of the tender document; or
- which contain conditions or qualifications not required or allowed by the tender document,

may be passed over.

No Tender, or qualification or departure from a contract condition or specification, is accepted unless the Principal gives an acceptance or formal agreement in writing.

Tenders may be accepted for the whole of the work or specific sections.

8.4 Protection of privacy

The Tenderer warrants, in respect of any personal information provided in this Tender or any contract arising from this Tender, that the information is accurate, up to date and complete, and that nominated individuals authorise its collection and are aware:

- that the information is being collected for the purpose of evaluating tenders and administering any contracts arising from those tenders and may be made available to other NSW government agencies or local government authorities for those purposes;
- whether the supply of the information by the individual is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided; and
- of the existence of any right of access to, and correction of, the information.

REFER TO ATTACHED SCHEDULE OF SPECIAL TENDERING CONDITIONS

9 Schedule of Special Tendering Conditions

9.1 Canvassing of Council Officials

Any Tenderer who solicits or attempts to solicit support for their tender or otherwise seeks to influence the outcome of the tender process by:

- offering any inducement, fee or reward to any member or officer of the Principal, or any person acting as an adviser for the Principal; or
- canvassing any persons referred to in this document; or
- contacting any member or officer of the Principal about the tender or any process relating thereto, except as authorised by these Conditions of Tendering, including (but without limitation) for the purposes of discussing the possible employment of the member or officer,

may, in Council's absolute discretion be disqualified from any further involvement in the tendering process (without prejudice to any other civil remedies available to the Principal and without any prejudice to any criminal liability which such conduct by a Tenderer may attract) and may have Preferred Tenderer status (if applicable) withdrawn.

9.2 Non-Collusion

Any Tenderer who:

- fixes or adjusts the amount of their tender by or in accordance with any agreement or arrangement with any other tenderer;
- enters into any agreement or arrangement with any other tenderer that it shall refrain from tendering or as to the amount of any tender to be submitted;
- causes or induces any person to enter such agreement or to inform the Tenderer of the amount or approximate amount of any rival tender for this RFT;
- canvasses any of the persons previously discussed in connection with the tender or the outcome of the tender process;
- offers to, agrees to, or does; pay any sum of money, inducement or valuable consideration, directly or indirectly to any person for doing, having done, causing, or caused to be done any act or omission in relation to any other tender or proposed tender;
- communicates to any person, other than the Principal, the amount or approximate amount of its proposed tender (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the tender, for insurance or contract guarantee bonds and/or performance bonds or professional advice required for the preparation of a tender),

may, at the discretion of the Principal, be disqualified from any further involvement in this tender process (without prejudice to any other civil remedies available to the Principal and without prejudice to any criminal liability which such conduct by a Tenderer may attract).

9.3 Probity considerations

Council may conduct or procure independent research regarding the Tenderer, Tenderer's Associates and/or the Tenderer's joint ventures, partners, guarantors or shareholders and the information contained in its tender. Council reserves the right to take into account any matters revealed as a result of its probity investigations in evaluating the tender lodged by the Tenderer.

The Tenderer consents to such probity investigations being conducted.

Council will be under no obligation to provide the Tenderer with details of the results of its probity investigations. Council reserves the right to reject a tender or take such other action as it considers appropriate in light of any information that it receives as a result of conducting its probity investigations.

Should any Tenderer consider that it is not being accorded fairness in the evaluation process, immediate notice of its complaint must be given in writing through the Principal's online forum or the Probity Advisor, if nominated in the RFT documents.

The notification must set out the alleged failure, the impact upon the Tenderer's interests, any relevant background information and the outcome desired.

In lodging its tender, the Tenderer agrees that any delay in notification of an alleged probity breach, or notification after the announcement of the preferred/ recommended Tenderer or the Contractor will operate as a waiver of any such breach and will preclude a Tenderer from relying upon or taking action based upon such breach.

END OF SECTION – CONDITION OF TENDERING