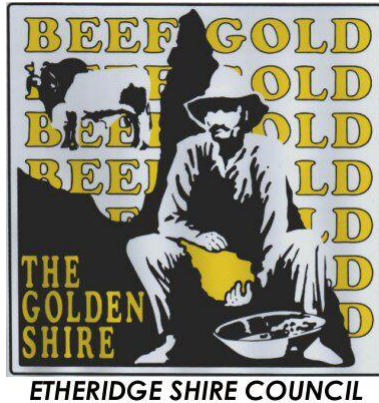


PART A – CONDITIONS



CONDITIONS OF TENDER

REGISTER OF PREFERRED SUPPLIERS OF WET AND DRY HIRE OF PLANT AND EQUIPMENT

TENDER NUMBER:	ESC2023-003
CLOSING DATE:	Friday 29th September 2023
CLOSING TIME:	12:00pm Midday
LODGEMENT:	HARD COPY AT ETHERIDGE SHIRE COUNCIL MAIN OFFICE OVER COUNTER OR BY POST

PART A – CONDITIONS

TABLE OF CONTENTS

1.	DEFINITIONS	3
2.	STRUCTURE OF REQUEST FOR TENDER.....	3
3.	OBTAINING INFORMATION	4
4.	RESPONSIBILITIES OF TENDERER	4
5.	FORMAL REQUIREMENTS	5
6.	LODGEMENT OF TENDER.....	6
7.	OPENING OF TENDERS	7
8.	TENDER EVALUATION PROCESS	7
9.	CLARIFICATIONS AND VARIATIONS.....	7
10.	CONFIDENTIALITY.....	8
11.	CODE OF CONDUCT	8
12.	ACCEPTANCE OF TENDER	9
13.	RIGHT TO INFORMATION AND DISCLOSURE	9
14.	OWNERSHIP OF TENDERS.....	9
15.	INFORMATION PRIVACY	9
16.	IN-HOUSE TENDERS	9
17.	GENERAL TERMS AND CONDITIONS.....	10

1. DEFINITIONS

1.1 In these Conditions of Tender, except where the context otherwise requires:

‘**Closing Time**’ means 12:00 pm Friday 29th September 2023, Australian Eastern Standard Time.

‘**Conditions of Tender**’ means these Conditions of Tender.

‘**Confidential Information**’ means any technical, commercial, or other information, ideas, and concepts, know-how, data, drawings, specifications, or designs of any kind:

- (a) owned by the Principal and supplied or made available by the Principal to the Tenderer; or
- (b) created by the Tenderer, from the material supplied or made available to the Tenderer by the Principal for the purposes of submitting the Tender.

‘**Contact Person**’ means Jack Parry, Infrastructure Services Operations Manager.

‘**Contract**’ has the meaning given in the General Conditions of Contract.

‘**Contract Price**’ has the meaning given in the General Conditions of Contract.

‘**Contractor**’ has the meaning given in the General Conditions of Contract.

‘**General Conditions of Contract**’ means the General Conditions of Contract (if any) comprising Part 4 of the Request for Tender.

‘**GST**’ has the meaning given in the General Conditions of Contract.

‘**Letter of Acceptance**’ has the meaning given in the General Conditions of Contract.

‘**Local Government**’ has the meaning given in the General Conditions of Contract.

‘**Personal Information**’ has the meaning given in the *Information Privacy Act 2009*.

‘**Principal**’ means Etheridge Shire Council.

‘**Relevant Person**’ means the Tenderer and each person engaged in the preparation of a Tender on behalf of the Tenderer.

‘**Request for Tender**’ or ‘**RFT**’ see Clause 2.1.

‘**RTI Act**’ means the *Right to Information Act 2009*.

‘**Specification**’ means the Specification comprising Part B of the Request for Tender, including any amendment or addition to the Specification.

‘**Tender**’ means a tender lodged in response to the Request for Tender.

‘**Tenderer**’ means any person lodging a Tender.

‘**Tender Response**’ means the Tender Response comprising Part C of the Request for Tender, including any templates or attachments to be completed and included in a Tender.

2. STRUCTURE OF REQUEST FOR TENDER

2.1 The documents comprising the Request for Tender are, collectively:

- (a) Part A – Conditions of Tender (read and keep this part); and
- (b) Part B – Specification (read and keep this part); and
- (c) Part C – Tender Response which, when completed by the Tenderer, comprises the Tender of the Tenderer (complete and return this part); and
- (d) Part D – General Conditions of Contract (read and keep this part);

2.2 All parts of the Request for Tender must be read and construed together so that all parts are as far as possible consistent. Where the documents are inconsistent, the documents should be read and construed in the order of priority from document (a) to (d) as follows:

- (a) Conditions of Tender.
- (b) Specification.
- (c) Tender Response.

(d) General Conditions of Contract.

- 2.3 **The Request for Tender is not an offer of work.** The Request for Tender is an invitation for persons to submit an offer for the supply and delivery and operation of Plant and or Equipment under Wet and Dry Hire Conditions as detailed in the Specification. The Principal will prepare a register of suitable suppliers from which it may select, under the guiding principles of the Local Government Act 2009 Qld Sec 104 (3), for work carried out by the Principal.

3. OBTAINING INFORMATION

The Principal will provide the Tenderer with the Request for Tender. No fee is payable for the supply of the Request for Tender.

Any additional information required by a Tenderer may be obtained from the Contact Person.

- 3.1 Tenderers must not direct requests for information to, or seek to discuss the Request for Tender process with, any Councillor or officer of the Principal other than the Contact Person.
- 3.2 The Principal will not be bound by any advice or information furnished by a Councillor or officer of the Principal with respect to the Request for Tender.
- 3.3 Information provided to the Tenderer by or on behalf of the Principal:
- (a) will be provided for the convenience of the Tenderer only, and, unless expressly incorporated into the Contract, will not form part of the Contract; and
 - (b) is not warranted or represented by the Principal as accurate, correct, or adequate.
- 3.4 If the Principal makes information available to a Tenderer, the Principal reserves the right to distribute the information to each Tenderer who has obtained a copy of the Request for Tender from the Principal.
- 3.5 If requested by the Principal, the Tenderer must:
- (a) provide further information relating to the Tender; and
 - (b) give a presentation at a time and place nominated by the Principal:
 - (i) to demonstrate the Tenderer's financial substance, technical capabilities, and resources; and
 - (ii) to demonstrate its ability to comply with the terms and conditions of the Contract; and
 - (iii) in relation to anything else relative to the Tender; and
 - (c) allow the Principal and its agents to inspect any facility or equipment the Tenderer proposes to use in complying with the terms and conditions of the Contract; and
 - (d) authorise the Principal and its agents (in writing, if required) to contact any referee nominated by the Tenderer; and
 - (e) authorise the Principal (in writing, if required) to obtain information about the Tenderer, particularly information relevant to the Tenderer's ability to discharge the responsibilities of the Contractor under the Contract, from any third party the Principal considers may be able to provide that information.
- 3.6 The Principal may provide information to Tenderers in electronic format, in addition to the hard copy format.
- 3.7 Where there is an inconsistency between the information in the electronic format and the hard copy information, the latter prevails.

4. RESPONSIBILITIES OF TENDERER

- 4.1 The Tenderer should not approach Councillors or Council Officers to discuss the Tender (other than the Contact Person as per section 3.2 of the Conditions of Tender). Any approach or known evidence of canvassing, breach of confidentiality or collusion by a Tenderer will be reported to the Chief Executive Officer.
- 4.2 If a Tenderer is found to have participated in any activity as described in 4.1 and such is evidenced on a "balance of probabilities", the Tender will be rejected, and the Tenderer will be disqualified from the Tender process.
- 4.3 Before submitting its Tender, each Tenderer must:

- (a) carefully read and consider the Request for Tender and any other information made available by the Principal with respect to the Request for Tender and the process of tendering for the Contract; and
- (b) read and consider all information relevant to the risks, contingencies, and other circumstances relevant to the Request for Tender; and
- (c) inform itself of the nature of the obligations it must discharge under the Contract; and
- (d) inform itself of the labour, plant and equipment and other items necessary, suitable, or desirable to enable the Tenderer to discharge its obligations under the Contract; and
- (e) independently verify any information provided by or on behalf of the Principal, and satisfy itself that the information is adequate and accurate; and
- (f) satisfy itself that the information in its Tender is accurate and complete; and
- (g) Satisfy itself that its Tender complies in all respects with the requirements of the Conditions of Tender.

- 4.4 In evaluating Tenders and determining with whom it will enter the Contract, the Principal will rely upon Tenderers having complied with the requirements of Clause 4.1 to 4.3
- 4.5 Failure to comply with any requirement set out in Clauses 4.1 to 4.3 will not relieve the relevant Tenderer of responsibility to complete the Contract in accordance with its terms, and in particular, the price or rate tendered by the Tenderer.
- 4.6 The Principal will not be responsible for the payment of any expenses or losses incurred by the Tenderer in:
- (a) preparing and lodging its Tender; or
 - (b) participating in any post Tender activities.
- 4.7 A Tender will not be considered if the Tenderer or anybody on its behalf offers or gives anything to:
- (a) any Councillor of the Principal; or
 - (b) any Officer or agent of the Principal,
- As an inducement or reward that could influence the actions of the person in relation to the Tender.

5. FORMAL REQUIREMENTS

- 5.1 The Tender must be submitted in writing in the form of the Tender Response.
- 5.2 The Tender Response must be fully completed, and include all supporting documents and materials required by both the Conditions of Tender and the Tender Response.
- 5.3 The Tender Response must contain the Tenderer's:
- (a) full name; and
 - (b) ABN/ACN; and
 - (c) Address and email address and facsimile number for the service of notices.
- 5.4 The Tender Response must be duly executed in a manner that binds the Tenderer.
- 5.5 The Contract Price in the Tender Response must be:
- (a) in Australian dollars; and
 - (b) GST inclusive.
- 5.6 A Tenderer must provide one executed copy of its Tender.
- 5.7 The Tenderer must:
- (a) securely attach (for example, by bulldog clip), but not bind or staple, the original of its Tender.
- 5.8 The identity of the Tenderer is fundamental to the Principal. For the purposes of a Tenderer's Tender, the Tenderer is the person, persons, corporation, or corporations:
- (a) who is named as the Tenderer in the Tender Response; and

(b) who has duly executed the Tender Response in a manner that binds the Tenderer.

- 5.9 A Tenderer may lodge non-conforming Tenders only if it has lodged a conforming Tender.
- 5.10 Each non-conforming Tender must be accompanied by a clear summary of all points of difference between the non-conforming Tender and the conforming Tender.
- 5.11 Each non-conforming Tender must be submitted on a separate Tender Response.
- 5.12 A Tender may be considered as non-conforming if the Tenderer has failed to supply any of the information required by the Conditions of Tender, does not comply with any of the requirements of the Conditions of Tender or has been lodged subject to any condition or qualification.
- 5.13 If more than one conforming Tender is lodged, each Tender must be accompanied by a clear summary of all points of difference between each conforming Tender.
- 5.14 The Principal will not be obliged to consider any Tender that does not comply with the requirements of the Conditions of Tender.

6. LODGEMENT OF TENDER

- 6.1 Each Tender must be submitted in a sealed envelope, addressed to:

**Chief Executive Officer
Etheridge Shire Council
PO BOX 12
GEORGETOWN QLD 4871**

and clearly marked with the number and title of the Tender as shown on the front cover of the Conditions of Tender.

- 6.2 Tenders must be lodged in the container marked "Tender Box" at:

**Etheridge Shire Council Administration Building
41 St George Street
GEORGETOWN QLD 4871**

Or

Emailed to: tender@etheridge.qld.gov.au

- 6.3 Where a Tenderer lodges a non-conforming Tender:
- (a) the conforming and non-conforming Tenders must be submitted in separate envelopes; and
 - (b) the non-conforming Tender must be clearly marked, "ALTERNATIVE TENDER" (in addition to being marked in conformity with Clause 6.1).
- 6.4 Tenders must be in the Tender Box by the Closing Time.
- 6.5 The Principal may extend the Closing Time at its discretion.
- 6.6 The Principal reserves the right to consider a Tender which is not in the Tender Box by the Closing Time if, in the opinion of the Principal, there is satisfactory evidence that:
- (a) the Tender was dispatched by prepaid post or courier service in sufficient time to effect delivery to the Tender Box by the Closing Time under normal circumstances; and
 - (b) at the Closing Time the Tender was still in the course of delivery.
- 6.7 A Tender will not be accepted if it is submitted:
- (a) by facsimile;
- 6.8 A Tenderer must not alter or add to the Tender Response unless required by the Conditions of Tender.
- 6.9 A Tender is irrevocable for 90 days after the Closing Time

6.10 The period in Clause 6.9 may be extended by mutual agreement between the Tenderer and the Principal.

7. OPENING OF TENDERS

- 7.1 Tenders will be opened after the Closing Time.
- 7.2 Tenders will be opened by Representatives of the Tender Panel.

8. TENDER EVALUATION PROCESS

8.1 Tenders will be evaluated by reference to the sound contracting principles in section 104 (3) of the *Local Government Act 2009 Qld*, namely:

Local Government Regulation 2012, section 232 (6), 233 (5).

- (a) value for money; and
 - (b) open and effective competition; and
 - (c) the development of competitive local business and industry; and
 - (d) environmental protection; and
 - (e) ethical behaviour and fair dealing.
- 8.2 Each Tender will be evaluated using the information provided in the Tender Response.
- 8.3 If a Tender Response for a Tender is not fully completed or does not include all supporting documents and materials required by the Conditions of Tender or the Tender Response, the Tender may be rejected.
- 8.4 In evaluating Tenders, the Principal may:
- (a) require presentations from Tenderers; and
 - (b) conduct interviews with Tenderer's staff and subcontractors; and
 - (c) contact Tenderers' referees; and
 - (d) investigate a Tenderer's structure and management, and that of any relevant subsidiary or related corporation; and
 - (e) make its own assessment of the Tenderer's ability to comply with the terms and conditions of the Contract at the tendered price; and
 - (f) verify that the Tenderer holds all necessary permits, licences, approvals, and certifications necessary to enable it lawfully to comply with the terms and conditions of the Contract.
- 8.5 Tenderers must give the members of the evaluation panel of the Principal any cooperation and assistance reasonably requested of them to facilitate consideration of their Tenders.
- 8.6 Each Tender will be assessed on a Yes/No basis as to whether each of the compliance criteria set out in the Tender Response Forms is satisfied by the Tenderer or not. If a Tender Response is assessed as "No" in respect of a criterion, the Tender may be rejected.

9. CLARIFICATIONS AND VARIATIONS

- 9.1 The Principal may issue to Tenderers before the Closing Time:
- (a) additional information; and
 - (b) information clarifying or correcting information previously provided, to assist them in preparing their Tenders.
- 9.2 If the Principal issues information to Tenderers under Clause 9.1, each Tenderer must take the information into account in the preparation of its Tender.
- 9.3 After the Closing Time, the Principal may (without limiting its options):
- (a) request clarification or further information from any Tenderer; and

- (b) invite all Tenderers to change their Tenders in response to an alteration to the Specification or any of the terms and conditions of the Contract; and
- (c) negotiate with one or more Tenderers upon any aspect of their Tenders.

10. CONFIDENTIALITY

10.1 The Tenderer:

- (a) acknowledges that the Confidential Information is sensitive and valuable, and will remain at all times the property of the Principal; and
- (b) must not use the Confidential Information for any purpose other than preparing its Tender; and
- (c) must not copy any material comprising or containing Confidential Information, other than where (and then only to the extent that) copying is necessary to enable it to prepare its Tender; and
- (d) must allow access to the Confidential Information by Relevant Persons only to the extent necessary to enable the Tender to be prepared; and
- (e) must obtain the Principal's written consent before disclosing Confidential Information to a person other than a Relevant Person.

10.2 The consent of the Principal to disclosure of the Confidential Information by the Tenderer may be given or withheld on such terms and conditions as the Principal considers appropriate.

10.3 The Tenderer's obligation under this Clause 10 continues after closure of tenders and award of the Contract.

10.4 The Principal reserves the right to retrieve from a Relevant Person any Confidential Information held by that person, subject to the Principal having given written notice to the Tenderer in writing that the Relevant Person is to be denied access to the Confidential Information.

10.5 Failure or delay by the Principal in enforcing strict compliance with this Clause 10 or pursuing a remedy under this Clause 10 will not constitute a waiver or implied variation of the entitlement or remedy.

10.6 This Clause will not apply to an item of Confidential Information where the Tenderer can establish that:

- (a) the item has been transferred to the public domain through no fault of the Tenderer; or
- (b) the item was already in the Tenderer's possession when it was supplied or made available by the Principal, and not acquired directly or indirectly from the Principal; or
- (c) it has received from the Principal written notification that the Principal no longer requires the Tenderer to keep the item confidential.

11. CODE OF CONDUCT

11.1 The successful Tenderer must familiarise itself with the Principal's Code of Conduct.

- (a) Develop an understanding of the standard of conduct that is expected to be achieved in performing role as contractor of the Principal; and
- (b) Be aware of the consequences that can be applied by the Principal for breach of the Code of Conduct.

11.2 The key elements of Council's code of Conduct are as follows;

- (a) Respect for the Law and Systems of Government
- (b) Respect for Persons
- (c) Integrity
- (d) Diligence
- (e) Economy and Efficiency

Council's code of conduct is available to review via the Etheridge Shire Council website.

12. ACCEPTANCE OF TENDER

- 12.1 The Principal will not be bound to accept the lowest or any Tender.
- 12.2 The Principal may accept a Tender from a Tenderer by giving written notice in the form of a Letter of Acceptance to the Tenderer who submitted the Tender to the Principal.
- 12.3 The Contract will not come into existence until the Principal has given written notice in the form of a Letter of Acceptance to the Tenderer.
- 12.4 When the Contract comes into existence the Tenderer becomes the Contractor for the purposes of the General Conditions of Contract.
- 12.5 The Principal reserves the right to accept a Tender in part or in whole.

13. RIGHT TO INFORMATION AND DISCLOSURE

- 13.1 The Tenderer must familiarise itself with the relevant provisions of the RTI Act dealing with the requirements for disclosure of information by agencies, and the grounds on which access to information may be refused.
- 13.2 The Principal accepts no responsibility for the accuracy or adequacy of any information it provides to Tenderers concerning the content or effect of the RTI Act.
- 13.3 The Principal reserves the right to disclose, by publication by means of media of its choosing upon award of any contract details of the name and address of the Contractor, a description of the relevant goods, services or goods and services, the commencement date of the Contract and the Contract Price or value.

14. OWNERSHIP OF TENDERS

- 14.1 Each Tender Response (including all supporting documentation and materials submitted by a Tenderer as part of, or in support of, a Tender) becomes the property of the Principal on submission and will not be returned to the Tenderer.
- 14.2 However, the Tenderer shall retain copyright and other intellectual property rights in respect of the Tender except to the extent specified in the Contract.
- 14.3 The Principal may reproduce the Tender for the purposes of evaluation.

15. INFORMATION PRIVACY

- 15.1 The Principal is bound by the provisions of the *Information Privacy Act 2009*.
- 15.2 By submitting a Tender, the Tenderer warrants that it has obtained the consent of everyone whose Personal Information is included in the Tender for:
- (a) the inclusion of their Personal Information in the Tender; and
 - (b) the use of the Personal Information by the Principal for the purpose of evaluating and awarding the Tender; and
 - (c) the disclosure of the Personal Information to other parties (including professional advisors) as may be involved in assisting the Principal with the evaluation of the Tender.
- 15.3 The Tenderer must indemnify the Principal against any claim, damage or loss (including legal costs and expenses) that the Principal may incur as a consequence of a breach by the Tenderer of the warranty in Clause 15.2.
- 15.4 Any Personal Information exchanged between the Tenderer and the Principal must be dealt with in accordance with the *Information Privacy Act 2009*.
- 15.5 The Tenderer must immediately notify the Principal upon becoming aware of any breach of this Clause 15.

16. IN-HOUSE TENDERS

- 16.1 The Principal reserves the right to submit an in-house Tender.

17. GENERAL TERMS AND CONDITIONS

- 17.1 The Tenderer consents to abide by the General Conditions of Contract (Part D of this Tender) in the provision of work if and when selected to provide wet hire plant and or equipment to the Principal.