



Tender for

Balgowan Northern Beach Access Upgrade	
Open request for tenders	
Tender Number 166/2017	
Tenderer's Name:	
Date:	

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1. **Structure of this RFT**

This RFT is comprised of five sections, being:

- 1.1 Section A - Background and General Information to Tenderers
- 1.2 Section B - Conditions of Tendering
- 1.3 Section C - Contract for Services
- 1.4 Section D - Specifications
- 1.5 Section E - Tender Response Schedules

2. Section A – Background and General Information

- 2.1 The Yorke Peninsula Council (the **Council**) invites tenders from Tenderers for consideration of a project to upgrade the Northern Beach Access at Balgowan in the 2017-18 financial year (the **Services**). The Council will enter into a Contract for Services with the successful Tenderer.

3. Section B – Conditions of Tendering

3.1 Definitions

In this RFT, the following terms shall, unless inconsistent with the context, have the meanings indicated:

- 3.1.1 A reference to a **clause** is a reference to a clause of this RFT.
- 3.1.2 **Closing Date** means the time and date specified in clause 3.2.3, or such later time and date as may be notified in writing to Tenderers by the Council.
- 3.1.3 **Conditions of Tendering** means these Conditions of Tendering as attached to Section B of this RFT.
- 3.1.4 **Conforming Tender** means a Tender described in clause 3.5.1.
- 3.1.5 **Contract for Services** means the contract for the provision of the Services as attached to Section C of this RFT, as may be subsequently amended by agreement between the Council and the successful Tenderer pursuant to clause 3.9.
- 3.1.6 **Nominated Contact Person** means the person named in clause 3.3.1
- 3.1.7 **Non-Conforming Tender** means a Tender does not meet the requirements set out in this RFT and/or the Tender Documents.
- 3.1.8 **Preferred Tenderer** means the Tenderer referred to in clause 3.9.
- 3.1.9 **RFT** means this Request for Tender.
- 3.1.10 **Services** means the services sought to be purchased by the Council pursuant to this RFT.
- 3.1.11 **Specifications** means the specifications specified in Section D of this RFT.
- 3.1.12 **Tender** means a tender submitted by a Tenderer pursuant to this RFT.
- 3.1.13 **Tender Documents** means the documents specified in clause 3.2.1.
- 3.1.14 **Tender Process** means the process for calling, receiving, evaluating and awarding of Tender(s) as proposed in clauses 3.2.7 and 3.2.8 of these Conditions of Tendering.
- 3.1.15 **Tender Response Schedules** are the forms attached to Section E of this RFT.
- 3.1.16 **Tenderer** has the meaning given to it in clause 3.2.2.
- 3.1.17 **Tenderer's Representative** means the person nominated by a Tenderer under clause 3.3.2.

3.2 Request for Tenders

The Council seeks Tenders from Tenderers for the provision of the Services, which are further described in the Tender Documents.

3.2.1 **Tender Documents**

The Tender Documents are comprised of:

- 3.2.1.1 these Conditions of Tendering;
- 3.2.1.2 the Contract for Services;
- 3.2.1.3 the Specifications; and
- 3.2.1.4 the Tender Response Schedules.

3.2.2 **Obtaining a Copy of this RFT**

This RFT is open to any organisation or person who registers its interest and details with the Council and thereby obtains a copy of the Tender Documents (each such party is a **Tenderer**). Parties obtaining the Tender Documents (in soft copy) will be required to register their name and contact details at the time of issue of the documents.

3.2.3 **Lodgement of Tenders**

3.2.3.1 Tenders must be delivered to the Tender Box at the Council prior to 5.00pm (ACST) on Friday 26 May 2017 (the **Closing Date**).

3.2.3.2 Applications must be enclosed in an envelope and marked "CONFIDENTIAL" and be addressed as follows:

Tender 166/2017 – Balgowan Northern Beach Access Upgrade
Yorke Peninsula Council
PO Box 57
MAITLAND SA 5573

Closing Date: 5.00pm (ACST), Friday 26 May 2017

3.2.3.3 Facsimile transmissions of Tenders will not be accepted.

3.2.3.4 Tenderers are required to lodge an original Tender plus one (1) copy, which (including copies of all supporting documentation) is to be certified by the Tenderer to be a true copy of the Tender.

3.2.4 **Late Tenders**

Tenders received after the Closing Date **WILL NOT** be considered or accepted.

3.2.5 **Extension of Time for the Submission of Tenders**

3.2.5.1 The Council may, in its absolute discretion, no less than two (2) business days before the Closing Date, extend the Closing Date by notice in writing to the Tenderers.

3.2.5.2 A Tenderer may request the Council to extend the Closing Date for the submission of a Tender by written application to the Nominated Contact Person.

- (a) Any such requests must be received by the Nominated Contact Person at least five (5) business days prior to the Closing Date, and must provide sufficient reasons to support the request.

- (b) It is entirely at the Council's discretion as to whether an extension is granted.

3.2.6 ***Tender Validity Period***

- 3.2.6.1 All Tenders will remain open for acceptance by the Council for a period of not less than one hundred and eighty (180) days after the Closing Date.
- 3.2.6.2 Once submitted, a Tenderer cannot withdraw its Tender without the prior written consent of the Council, unless the Tender is withdrawn in writing before the Closing Date.

3.2.7 ***Proposed Tender Process***

Tenders will be assessed in accordance with Council's Purchasing and Procurement Policy.

3.2.8 ***Proposed Timing of Tender Process***

The proposed timing for the Tender Process is as follows:

Request for Tenders	1 May 2017
Closing Date	26 May 2017
Notification to successful Tenderer	To be Determined
Execution of Contract for Services	To be Determined
Commencement of Provision of Services	To be Confirmed with the Successful Tenderer

3.2.9 ***Copying Tenders***

Tenderers must not use this RFT or the RFT Documents (including any attached technical and other written information supplied by the Council) for any purpose other than to prepare a Tender. This includes not copying this RFT or the RFT Documents (including any attached technical and other written information supplied by the Council) and providing a copy to any third party not involved in the preparation of a Tender.

3.3 **Communication between the Parties**

3.3.1 ***Enquiries or Requests for Information or Clarification***

- 3.3.1.1 Any enquiries or requests for information or clarification regarding this RFT or the Tender Documents must be made in writing and addressed to the Nominated Contact Person.

The Nominated Contact Person is Mr Stephen Goldsworthy.

- 3.3.1.2 The Nominated Contact Person may (but is not obligated to) respond to a Tenderer's enquiries or requests for information or clarification.

3.3.1.3 If the Council provides any information to a Tenderer by way of clarification, then the Council reserves the right to provide that information to other Tenderers.

3.3.1.4 No statement made by the Nominated Contact Person, or any other representative of the Council should be construed as modifying this RFT or any of the Tender Documents, unless confirmed in writing by the Nominated Contact Person.

3.3.2 ***Tenderer's Contact Person***

3.3.2.1 Tenderers are required to nominate a person to be the authorised contact person and supply an address for the service of any notices for the purpose of this RFT (**Tenderer's Representative**).

3.3.2.2 Each Tenderer must notify the Council of its Tenderer's Representative within five (5) business days of obtaining the Tender Documents.

3.3.2.3 All communication with the Tenderer will be via the Tenderer's Representative.

3.3.3 ***Site/Industry Briefing***

3.3.3.1 The Council may conduct a site/industry briefing. The briefing (if conducted) is intended to provide Tenderers with background information, and Tenderers are not to treat any statements made at the briefing as variations to this RFT.

3.3.3.2 The Council reserves the right to require all Tenderers to attend the site/industry briefing.

3.3.3.3 Details of the briefing will be provided to Tenderers at least seven (7) business days prior to the briefing. Tenderers may be notified of the site/industry briefing by email, and Council may post the details of the briefing on the internet.

3.3.3.4 Each attending Tenderer must advise the Nominated Contact Person of the details of that Tenderer's attendees (including name and position) at least two (2) business days before the briefing.

3.3.4 ***Tenderer not to solicit the Council and its employees***

The Tenderer and its representatives must not interfere or attempt to interview or to discuss its Tender with Councillors or employees of the Council, other than the Nominated Contact Person. The Council reserves the right to reject any Tender submitted by a Tenderer which contravenes this clause.

3.4 **Tender Preparation**

3.4.1 ***Tenderers to be informed***

Each Tenderer must, prior to submitting its Tender, become acquainted with the nature and extent of the Services to be undertaken, and make all necessary examinations, investigations, inspections and deductions.

3.4.2 ***Evidence of Registration or Licensing***

Each Tenderer must (if applicable) be licensed or registered to perform the Services.

3.4.3 **Conflict of Interest**

Tenderers must inform Council of any circumstances or relationships which will constitute a conflict or potential conflict of interest if the Tenderer is successful. If any conflict or potential conflict exists, the Tenderer must advise how it proposes to address this.

3.4.4 **Use of Sub-contractors**

Where a Tenderer proposes to use resources from organisations other than the Tenderer itself, substantial information relating to the contractual arrangements for such resources must be detailed in the Tender, together with information on the relevant experience of such other organisation.

3.4.5 **Ombudsman Act**

Tenderers should be aware that the *Ombudsman Act 1972 (SA)* has been amended so that the definition of “administrative act” under that Act includes an act done in the performance of functions under a contract for services with a Council. That Act also includes powers enabling the Ombudsman to investigate matters in the public interest. The Tenderer must ensure compliance with all obligations arising under that Act and any other applicable legislation.

3.4.6 **Freedom of Information**

Tenderers should be aware that the *Freedom of Information Act 1991 (SA)* (**FOI Act**) gives members of the public rights to access documents of the Council. The FOI Act promotes openness in governance and accountability of government agencies and confers the public with a legally enforceable right to be given access to documents, including contracts entered into by the Council, except for those contracts or provisions which should be kept confidential for public interest purposes, the preservation of personal privacy or are commercial in confidence.

3.4.7 **Collusion**

The Tenderer must not collude with any other Tenderers or potential Tenderers.

3.4.8 **Tenderer’s confidential information**

3.4.8.1 Subject to clauses 3.4.8.2 and 4, the Council will treat as confidential all Tenders submitted by Tenderers in connection with this RFT.

3.4.8.2 The Council will not be taken to have breached any obligation to keep information provided by Tenderers confidential to the extent that the information:

- (a) is disclosed by the Council to its advisers, officers, employees or subcontractors solely in order to conduct the RFT process or to prepare and manage any resultant agreement;
- (b) is disclosed to the Council’s internal management personnel, solely to enable effective management or auditing of the RFT process;
- (c) is disclosed by the Council to the responsible Minister;
- (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 relevant obligations of confidentiality.

3.5 **Tender Documents**

3.5.1 **Conforming Tenders**

A Conforming Tender is a Tender which meets all of the requirements set out in this RFT and the Tender Documents.

3.5.2 **Non-Conforming Tenders**

The Council is not required to, but may at its sole discretion, consider an incomplete, informal or a Non-Conforming Tender. Failure to respond to or meet any of the requirements set out in this RFT and the Tender Documents will result in the Tender being deemed a Non-Conforming Tender.

3.5.3 **Content of Tenders**

3.5.3.1 Tenderers are required to complete the Tender Response Schedules and submit them to the Council.

3.5.3.2 Tenderers can also supply any other additional information or documents. The Council may have reference to such additional information or documents in evaluating the Tenders.

3.5.3.3 All prices quoted by Tenderers in their Tender are:

- (a) to be in Australian dollars;
- (b) to be exclusive of GST; and
- (c) (if subject to rise and fall) to provide full details of how the rise and fall applies and the method of determining the price.

3.5.3.4 If a Tenderer proposes to provide the Services on a basis different to that envisaged by the Tender Documents (whether for reasons of innovation, efficiency or otherwise) that proposal should be fully documented and justified with the Tender. The Council does not warrant that any discussion with the Council's Nominated Contact Person prior to the Closing Date in relation to such a proposal will be taken into account in evaluating the Tenders.

3.6 **Acknowledgement by Tenderers**

Tenderers acknowledge that the Council:

- 3.6.1 makes no representations and offers no undertakings in issuing this RFT or the Tender Documents;
- 3.6.2 is not bound to accept the lowest Tender or required to accept any Tender;
- 3.6.3 may accept all or part of any Tender;
- 3.6.4 may require one or more Tenderers (but is not obliged to require all) to supply further information and/or attend a conference or interview;

- 3.6.5 may require one or more Tenderers (but is not obliged to require all) to make presentation(s);
- 3.6.6 may undertake “due diligence” checks on any Tenderer, including verifying references and/or referees, and undertaking company searches and credit checks;
- 3.6.7 will not be responsible for any costs or expenses incurred by the Tenderer arising in any way from the preparation and submission of its Tender;
- 3.6.8 accepts no responsibility for a Tenderer misunderstanding or failing to respond correctly to this RFT;
- 3.6.9 will not be liable for or pay any expenses or losses incurred by any party whether in the preparation of a Tender or prior to the signing of any Contract for Services or otherwise; and
- 3.6.10 will not be bound by any verbal advice given or information furnished by any member, officer or agent of the Council in respect of the Tender Documents or this RFT, but will be bound only by written advice provided by the Nominated Contact Person.

3.7 Council's Rights

The Council reserves the right to:

- 3.7.1 amend, vary, supplement or terminate this RFT at any time;
- 3.7.2 accept or reject any Tender, including the lowest price Tender;
- 3.7.3 negotiate with any service provider on all or any part of the Services to be supplied pursuant to this RFT;
- 3.7.4 vary the timing and process referred to in clauses 3.2.7 and 3.2.8;
- 3.7.5 postpone or abandon this RFT;
- 3.7.6 add or remove any Tenderer;
- 3.7.7 accept or reject any Tenders whether or not they are Conforming Tenders;
- 3.7.8 accept all or part of any Tender;
- 3.7.9 negotiate or not negotiate with one or more Tenderers; and/or
- 3.7.10 discontinue negotiations with any Tenderer.

3.8 Tender Evaluation

- 3.8.1 In assessing Tenders, the Council will have regard to, but not necessarily be limited to, the following criteria (not listed in any order of priority):
 - 3.8.1.1 insurance;
 - 3.8.1.2 compliance with work health and safety requirements;
 - 3.8.1.3 customer service experience and capacity;
 - 3.8.1.4 the tendered prices, including the proposed pricing structure;

- 3.8.1.5 the level of risk associated with negotiation of an acceptable Contract for Services;
- 3.8.1.6 environmental management systems (if applicable);
- 3.8.1.7 degree of compliance with the requirements set out in this RFT and the Tender Documents; and
- 3.8.1.8 such other matters that Council considers relevant, including:
 - (a) details of current and previous relevant experience in the provision of the Services;
 - (b) the provision of any aspect of the Services by sub-contractors (if applicable);
 - (c) financial resources;
 - (d) staff resources; and
 - (e) current and future contracts/workload.

3.8.2 ***Use of Tender Documents***

The Council may use, retain and copy any information contained in the Tenders for the evaluation of Tenders and for the finalisation of the provisions of the Contract for Services.

3.8.3 ***Debriefing of Tenderers***

If requested, Tenderers may be debriefed against the Council's evaluation criteria. Tenderers will not be provided with information concerning other Tenderers, apart from publicly available information. No comparison with other Tenders will be made.

3.9 **Acceptance of Tender**

- 3.9.1 The Council reserves the right to negotiate different terms and conditions for the Contract for Services with any one or more Tenderers (each referred to as a **Preferred Tenderer**).
- 3.9.2 The Council and the Preferred Tenderer may (if required) enter into negotiations for the award and execution of a Contract for Services.
- 3.9.3 If, despite their best endeavours and acting in good faith, the Council and the Preferred Tenderer are unable to negotiate and agree on the terms of the Contract for Services, the Council reserves the right to negotiate with any other parties, including other Tenderers, for the provision of the Services.
- 3.9.4 The successful Tenderer will be notified in writing by the Council of the Council's acceptance of its Tender. The successful Tenderer must not make any oral or written public statements in relation to the awarding of a Contract for Services until written notice is received by the Tenderer.
- 3.9.5 The notification of the acceptance of Tender by the Council creates an obligation on the Council and the successful Tenderer to enter into the Contract for Services (subject to any variations agreed pursuant to this clause 3.9).

3.9.6 The successful Tenderer acknowledges and agrees that all intellectual property created by the successful Tenderer arising out of the provision of the Services belongs to the Council, and the successful Tenderer will do all reasonable things necessary to assist the Council in the protection and transfer of ownership of the intellectual property resulting from the provision of the Services.

3.10 **Unsuccessful Tenders**

Unsuccessful Tenderers must, if required by the Council, return the Tender Documents to the Council, once they have been advised that their Tender is unsuccessful.

3.11 **No Legal Requirement**

The issue of this RFT or any response to it does not commit, obligate or otherwise create a legal obligation on the Council to purchase the Services from the Tenderers.

4. **Governing Law**

4.1 This RFT is governed by the law in South Australia.

4.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

5. **ICAC**

Tenderers acknowledge that if they enter into a contract with the Council they will be considered to be public officers for the purposes of the *Independent Commissioner Against Corruption Act 2012 (SA)* (**ICAC Act**) and will be obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

6. **Section C – Contract for Services**

A Contract for Services will be completed and executed following appointment of the preferred Tenderer.

7. **Section D – Specifications**

Please refer to the attached Technical Specification (Attachment A).

8. Section E – Tender Response Schedules

Schedule 1 Tender Form – Formal Offer

I/We _____ (Tenderer) on _____ having read, understood and fully informed myself/ourselves/itself of the contents, requirements and obligations of the Request for Tender, do hereby tender to provide and complete the Services described in the Specifications in accordance with the Contract for the amounts set out in the Tender Return Schedules attached.

The Tenderer:

1. is subject to the terms and conditions set out in the Conditions of Tendering;
2. irrevocably offers to perform the Services on the terms of the Contract and the Specifications which form part of the Tender Documents subject only to the variations set out in Schedule 9;
3. confirms that this Tender has been prepared without any consultation, communication, agreement or other arrangement with any competitor regarding:
 - 3.1 prices or methods, factors or formulae used to calculate prices;
 - 3.2 the intention or decision to submit a Tender, or the terms of the Tender;
 - 3.3 the submission of a Non-Conforming Tender; and
 - 3.4 the quality, quantity, specifications or particulars of the Services; and
4. holds this offer open and capable of acceptance by the Council for a period of one hundred and eighty (180) days from the closing date.

The undersigned undertakes that if selected as the successful Tenderer, I/we/it will execute and be bound by the Contract in accordance with the Conditions of Tendering.

If the Tenderer is a company, it must execute this Tender as follows:

Executed by _____ pursuant to section 127 of the <i>Corporations Act 2001</i> :	
..... Signature of Director Signature of Director/Company Secretary <i>(Please delete as applicable)</i>
..... Name of Director (print) Name of Director/Company Secretary (print)
OR Signature of Sole Director and Sole Company Secretary	
..... Name of Sole Director and Sole Company Secretary (print)	
OR Signed for _____ by an authorised representative in the presence of:	
..... Signature of witness Signature of authorised representative
..... Name of witness (print) Name of authorised representative (print)
 Position of authorised representative (print)

If the Tenderer is an individual, the document must be executed as follows:

Signed by _____ in the presence of:	
Signature of witness	Tenderer
Name of witness (print)	

If the Tenderer is a partnership, the Tender must be executed as follows:

Partner 1:

Signed sealed and delivered by _____ in the presence of:	
Signature of witness	Signature of partner
Name of witness (print)	
Address of witness (print)	

Partner 2:

Signed sealed and delivered by _____ in the presence of:	
Signature of witness	Signature of partner
Name of witness (print)	
Address of witness (print)	

Schedule 2 Tenderer's Details

<p>1. Name of Tenderer</p> <p>State in full the name(s) of the person(s) or the registered name(s) of the company(s) and trading names.</p> <p>ABN number</p>	
<p>2. Contact Person</p> <p>Nominate a contact person for this Tender to deal with any questions or queries that may arise.</p>	
<p>3. Registered Address</p>	
<p>4. Postal Address</p>	
<p>5. Telephone</p>	
<p>6. Fax</p>	
<p>7. Email</p>	
<p>8. Tender Conditions</p> <p>Tenderer to sign that it has read and understood this RFT and the Conditions of Tender.</p>	
<p>9. Amendments to Tender Documents</p> <p>Tenderer to indicate the amendments it requests.</p>	

Schedule 3 Licences and Accreditation

Please list details of any licences or accreditations required or relevant to this Tender.

Schedule 4 Insurance

Please complete and return the attached Contractor Information Request and associated documentation (Attachment B).

Schedule 5 Environmental Management System

Please provide details of your environmental management system and where possible, examples of:

- Reports on environmental performance.
- Incident reports including actions taken to address the incident and improvements to processes to reduce risk of occurring again.
- Environmental management plans established for other contracts.

Schedule 6 Quality Systems

Please describe the level of quality assurance in place in your organisation and plans to move to quality accreditation if not presently accredited.

Please provide details of contracts performed under your Quality Assurance System.

Schedule 7 Conflict of Interest

Please provide details of any interest, relationship or clients which may or do give rise to a conflict of interest and the issue about which that conflict or potential conflict does or may arise.

Schedule 8 Referees

Please provide details of at least three (3) references for similar work and information on the approximate date when work was completed as well as the approximate value of the work undertaken.

Reuse this page if more than three (3) references are provided.

Client Name:	
Address:	
Contact Name:	
Telephone:	
Completion Date:	
Value of Work:	

Client Name:	
Address:	
Contact Name:	
Telephone:	
Completion Date:	
Value of Work:	

Client Name:	
Address:	
Contact Name:	
Telephone:	
Completion Date:	
Value of Work:	

Schedule 10 Organisation Structure, Facilities and Resources

1. Organisation structure

Please provide details of the staff and the organisation structure proposed to be used for performance of the Services. Details must include, but not be limited to:

- Company structure to be used to support the Services including size and location of office, organisation structure.
- Number of staff proposed to be used and their qualifications and experience.

2. Other details (e.g. specific plant and equipment, vehicles)

3. Proposed subcontractors

Please provide details, in the Table below, of the proposed major subcontractors or other representatives to be employed or engaged for this Tender, including the scope and extent of Services to be provided by subcontractors.

Subcontractor's Name and Address	Services to be Provided	Item(s)

4. Contingency arrangements

Please provide details of contingency arrangements should any facilities or sites required to facilitate the Contract become unavailable in the short and long term.

Schedule 11 Experience

1. Past performance

For how many years have you engaged in the type of work required by the Contract?

Have you had an appointment terminated on a project in the last five (5) years? If yes, please provide brief details.

Have you terminated a project in the last five (5) years? If yes, please provide brief details.

Have you refused to continue providing services under a contract in the last five (5) years unless the terms or payments were changed from those which were originally agreed? If yes, please provide brief details.

2. Current contracts

Please provide details of current contracts in a local government environment including the range of services provided and the numbers and types of properties serviced.

3. Other commitments

Provide details of other work commitments expected to continue during this Contract.

