

Conditions of Tendering for Funded Services

A. Tender Information

1. Definitions and Interpretation

“Agency” refers to the agency within the **NSW Department of Family & Community Services (FACS)** who leads this Tender.

“Addendum” means an addendum to this RFT issued by the FACS agency prior to the Closing Date and Time.

“Alternative Tender” means a Non-Conforming Tender which the Tenderer offers as an alternative method of achieving the purpose and intent of the requirement set out in the RFT.

“Closing Date and Time” are the date and time by which Tenders are to be received in full in accordance with the lodgement conditions set out in these Conditions of Tender.

“Conforming Tender” means a Tender that conforms to the requirement as set out in the RFT.

“Consortium” is a group of entities established as a single legal entity to tender for this RFT.

“Contract” means the proposed Funding Agreement (Terms & Conditions of Agreement) between the FACS agency and a selected Tenderer.

“Funding or Service Agreement” means a form in which a contract can be recorded.

“Late Tender” means a Tender which is received, in whole or part, after the Closing Date and Time.

“Non-Conforming Tender” means a Tender that does not conform to the requirement as set out in the RFT.

“RFT” means the Request for Tender.

“Tender” means the offer to supply the goods or services described in the RFT, submitted in response to the RFT.

“Tenderer” means the eligible legal entity submitting the Tender.

“Validity Period” means the time period, whether expressed as a duration or by reference to an end date, during which the Tender remains open for acceptance by FACS.

2. Conformity of Tenders

2.1 FACS seeks Conforming Tenders from eligible organisations in response to the RFT.

2.2 A Tenderer may submit more than one Conforming Tender.

2.3 FACS reserves the right, in its sole discretion, to give consideration to and accept a Non-Conforming Tender provided that FACS deems it to be substantially a Conforming Tender.

2.4 FACS also reserves the right, in its sole discretion, to give consideration to and accept an Alternative Tender.

3. Legal Relationship

3.1 These Conditions of Tendering will not form part of any Contract entered into between FACS and the Tenderer.

3.2 The Tenderer acknowledges and agrees that no legal rights or obligations will be deemed to have been created between FACS and any Tenderer unless and until a Tender is accepted.

4. Eligibility to Tender

4.1 A Tender may only be submitted by a legal entity with the capacity to contract.

4.2 FACS may request the Tenderer to provide evidence of its legal status. If so requested, the Tenderer shall submit the information within three working days after receipt of the request.

4.3 If in the opinion of FACS a Tenderer does not have appropriate financial assets, FACS reserves the right to reject its Tender or to make acceptance of its Tender conditional upon the Tenderer entering into a financial guarantee or unconditional performance bond. FACS may engage an independent financial assessor for the purpose of ascertaining a Tenderer’s financial position.

4.4 FACS does not contract with entities which are bankrupt, are subject to a winding up order, or have had an administrator appointed.

5. Joint Tenders

FACS’s preference is for each of its contracts to be with a single entity. However a joint Tender or Consortia arrangement between two or more Tenderers may be considered by FACS in its discretion.

6. Related Companies

6.1 Where separate Tenders are submitted by related companies, FACS may seek assurances in relation to the competitiveness of the tendering process.

6.2 In this context, a related company is a company which has one or more common controlling shareholders, directors or any other body that has the capacity to influence or control the content or direction of a Tender.

6.3 If so requested by FACS a Tenderer shall, where it is a related company, demonstrate the independent competitive nature of its organisation. FACS reserves the right, in its sole discretion, to reject a Tender on the grounds that in FACS’s opinion there is sufficient evidence of anti-competitive practices in relation to that Tender.

7. Subcontractors

7.1 If a Tenderer proposes that any part of the requirement in this Request for Tender is to be performed under subcontract, the names of the proposed subcontractors and details of the work proposed to be undertaken by them must be set out in the response schedule.

7.2 The Tenderer in the event of being awarded a Contract will be responsible for the actions of any subcontractor, and will remain responsible for the fulfilment of the requirements under the Contract.

8. No Obligation to Proceed

8.1 This invitation to tender does not commit FACS in any way to provide funding or assistance to any Tenderer. The outcome of the process is subject to the evaluation of all tenders in accordance with the stated assessment criteria and the endorsement of any recommendations of the assessment panel by the Minister or delegated officer, unless FACS discontinues the process at an earlier stage.

8.2 FACS reserves the right to discontinue or cancel the tender process at any point, without making a determination regarding acceptance or rejection of Tenders. FACS will not

be liable for any losses suffered by any Tenderer as a result of discontinuance of the tender process, including costs of tendering.

9. Probity

FACS is committed to ensuring that competition for the provision of the requirements specified is fair and open. For Tenderers this means that:

- a) Assessment of Tenders will be conducted consistently and objectively;
- b) Each Tenderer will have access to the same information about the RFT;
- c) Information provided in a Tender will be secure, and all confidential information treated as such; and
- d) All actual, potential or perceived conflicts of interest will be addressed.

10. Disclaimer

10.1 The information set out in the RFT requirement is, unless expressly stated otherwise, provided on a 'best endeavours' basis.

10.2 Unless expressly stated otherwise in the RFT, FACS gives no warranty nor makes any representation as to the currency, reliability or completeness of the information contained in the RFT.

11. Tender Enquiries

11.1 Tenderers who wish to have any aspect of the RFT documents or the evaluation process clarified are asked to direct an enquiry in writing to the contact officer nominated for that purpose in the RFT. The Tenderer should not rely on information provided by any other officer of FACS in response to an enquiry.

11.2 Any additional relevant information provided in response to tender enquiries may also be communicated to Tenderers generally, by means of an Addendum.

B. Tender Preparation

12. Pre-Tender Briefing

12.1 The RFT may set out that a Pre-Tender Briefing will be held, and if so will state the date, time and location of the Briefing. The RFT may further stipulate that attendance at the Briefing is mandatory for intending Tenderers.

12.2 If the RFT stipulates that attendance at a Pre-Tender Briefing meeting is mandatory and the Tenderer or its representative does not attend, FACS reserves the right, in its absolute discretion, to reject a Tender submitted by that Tenderer by reason of that non-attendance. Evidence of attendance will generally be by means of an attendance register signed by attendees but may be by any other means as FACS sees fit.

13. Goods and Services Tax

13.1 Unless otherwise called for in the RFT, all sums, prices, fees and rates tendered must be inclusive of GST. Tenderers must quote their Australian Business Number (ABN) in their Tender. Any Tender submitted without an ABN will not be considered.

13.2 "GST" has the same meaning as in the GST Law. "GST Law" means any law imposing a Goods and Services Tax and includes the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

14. [not used]

15. [not used]

16. Compliance with NSW Code of Practice for Procurement

16.1 All Tenderers must comply with the provisions of the *NSW Government Code of Practice for Procurement* 2005. The ability of a Tenderer to demonstrate compliance with the Code is an essential condition of the tender. Lodgement of a tender will itself be evidence of the Tenderer's agreement to comply with the Code for the duration of any Contract that may be awarded.

16.2 If any Tenderer fails to comply with the Code, the failure may be taken into account by FACS when considering this or any subsequent Tender, and may result in this or any subsequent Tender being rejected by reason of non-compliance with the Code, without prejudice to any other right of action or remedy available at law or equity to FACS.

16.1 The NSW Government Code of Practice for Procurement may be accessed through the FACS Intranet; [Code of Practice for Procurement](#) or the NSW Treasury web site (www.treasury.nsw.gov.au)

17. Property in Tender Documents

All documents submitted by the Tenderer, as part of the Tender, will become the property of FACS upon receipt. Once lodged, FACS may copy, extract or otherwise deal with all or any part of a Tender for the purpose of conducting the RFT process.

18. Tender Costs

All costs incurred by any organisation responding to the RFT will be borne by that organisation.

19. Validity Period

19.1 Tenders must remain open for acceptance (the Validity Period) for a minimum of ninety (90) days after the Closing Date and Time. The Tenderer may state a longer period for which its Tender remains open for acceptance.

19.2 The Validity Period of a Tender may be extended or renewed by mutual agreement between FACS and the Tenderer.

20. Compliance with NSW Electronic Transactions Act 2000

By lodging its Tender through eTender the Tenderer is providing an electronic signature in accordance with the *Electronic Transactions Act 2000 (NSW)* and is taken to have accepted any conditions shown on the NSW Government eTendering website.

21. Conflict of Interest

The Tenderer warrants that no conflict of interest which might affect its performance of the requirement set out in the RFT exists as at the time of lodging the Tender. The Tenderer shall immediately inform FACS upon it becoming aware, during the tender period or during the currency of any resultant Contract, of circumstances which give rise to any actual or potential conflict of interest. The Tenderer shall comply with any direction given by FACS for the purpose of eliminating, avoiding or mitigating such conflict of interest.

22. Corrections, Additions and Replacement Tenders

22.1 If a Tenderer becomes aware of an error or omission in its Tender and wishes to submit a correction or additional information, this must be lodged with the eTendering website before the closing time.

22.2 The Tenderer may incorporate the correction or addition into a replacement Tender. A Tender which the Tenderer

designates as a replacement Tender will be deemed as superseding its earlier Tender, which will then be disregarded.

- 22.3 Tenderers should note that since Addenda become part of the RFT it may be necessary to submit a replacement Tender which incorporates the content of Addenda that were issued after their Tenders have been lodged.
- 22.4 FACS will consider the last submitted Tender.

23. Corrupt or unethical conduct

If a Tenderer or any of its officers, employees, agents or subcontractors is found to have:

- a) offered any inducement or reward to any employee, agent or subcontractor of FACS or the NSW Government in connection with the RFT or the submitted Tender;
- b) engaged in corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988*; or
- c) a record or alleged record of unethical behaviour,

then FACS may in its discretion reject the Tender, either forthwith or, at FACS's option, after obtaining further information from the Tenderer about its conduct.

C. Submission of Tenders

24. Tender Lodgement

- 24.1 Unless otherwise stated in the RFT, all Tenders (including any supporting documents) must be lodged electronically through the internet at <https://tenders.nsw.gov.au>. Tenders submitted by facsimile will not be accepted.
- 24.2 Exceptions to the requirement for electronic lodgement shall only apply where FACS has provided prior written approval to a Tenderer to lodge a Tender or part thereof in hard copy or some other physical form.
- 24.3 For tenders submitted electronically, the time displayed on NSW eTendering is deemed to be the correct time and will be the means by which FACS will determine that Tenders have been lodged by the closing time.
- 24.4 FACS may, by written notice in an Addendum, extend the closing time.
- 24.5 Electronically lodged Tenders must be submitted in a file format that can be read by either Microsoft Word 2003 or Adobe® Acrobat® Reader 7. Tenderers are to ensure that file names do not exceed 100 characters, do not contain symbol characters, and are not stored deep within the Tenderer's file directory.
- 24.6 If a Tender is an Alternative Tender, or if it is a replacement for a Tender already lodged, this is to be stated clearly on the first page of the Tender. The file name should also incorporate characters which identify it as an Alternative Tender or replacement Tender.
- 24.7 Tenderers may compress electronically submitted Tenders in a format that can be decompressed by WinZip®. Lodgement files should not individually exceed 8 megabytes (MB). Should a tender response be larger than 8MB, the Tenderer should lodge the Tender in multiple uploads ensuring that each upload does not exceed 8MB and clearly identify each upload as part of the tender. Download time will vary depending on file size and internet connection speed. A connection speed of 512k with a file size of 100MB is estimated (as a guide only) to take up to 28 minutes. If a tender consist of multiple uploads, due to the number of files or file size, it is the responsibility of Tenderers to ensure that transmission of all files is completed before the closing time.
- 24.8 Tenderers must not submit executable files, as the eTendering website may treat them as viruses.

- 24.9 Tenders on receipt are encrypted and stored in a secure 'electronic tender box' that cannot be accessed until after the closing date of the RFT. The email receipt that is sent to the Tenderer after successfully uploading the Tender is the only evidence provided of tender lodgement.

25. [deleted]

26. Opening and Registration of Tenders

Following the Closing Date and Time, the eTender box (<https://tenders.nsw.gov.au>) will be opened by officers who have no material interest or involvement in the tender process. All Tenders will be registered and a list of Tenderers will be posted on the eTendering website within seven (7) days of the closing date.

27. Late Tenders

- 27.1 In accordance with the requirements of the NSW Government Code of Tendering, Late Tenders will not be considered except when it is clear that the cause of lateness was beyond the Tenderer's reasonable control and FACS is satisfied that the integrity and competitiveness of the tendering process has not been compromised.
- 27.2 Normally, Tenders lodged past the Closing Date and Time will not be considered further if they are submitted by electronic communication and the transmission of the Tender has not been completed before the Closing Date and Time, including where delay may be due to the receiving facility being engaged, faulty or otherwise inoperative.
- 27.3 Notwithstanding the identification of a Closing Date and Time for the lodgement of tenders, FACS reserves the right, in its absolute discretion, to give consideration to any Tender received after the Closing Date and Time. This right will be exercised only with good reason and in a manner that will minimise any advantage that may be seen to be gained thereby.

28. [not used]

D. Evaluation of Tenders

29. Evaluation of Tenders

- 29.1 Tenders will be assessed against the stated assessment criteria, which are not necessarily exhaustive, in order of significance or to be given equal weight.
- 29.2 If any criterion or sub-criterion is stated to be "mandatory" a failure by the Tender to comply fully with that criterion or sub-criterion will result in exclusion of the Tender without further consideration.
- 29.3 Information supplied by the Tenderer in the Tenderer Response section will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all of the assessment criteria in the Tenderer Response section.
- 29.4 Notwithstanding any other provisions in this clause, where information provided in a Tender is omitted, illegible or unintelligible, FACS may treat this as failure to fulfil the relevant requirement.
- 29.5 By submitting a Tender, the Tenderer consents to FACS seeking further information about the Tenderer's organisation, capabilities or previous performance, including from referees concerning prior contracts on which the Tenderer may have been involved or affiliates or associates of the Tenderer (whether or not nominated by the Tenderer in its Tender).
- 29.6 The Tenderer agrees to take part, if called upon to do so in the course of tender evaluation and provided reasonable notice is given by FACS, in any or all of the following, either

at the Tenderer's or FACS's premises as FACS may decide:

- a) Interview of one or more representatives of the Tenderer;
- b) Presentation of the Tenderer's offer;
- c) Demonstration of the Tenderer's products or proposed solution;
- d) Site visit and inspection of facilities.

30. Clarification of Tenders

- 30.1 FACS may seek clarification in writing of certain matters to obtain a better understanding of aspects of a Tender. Generally, Tenderers will be expected to respond to clarification requests in writing within 5 business days.
- 30.2 If in FACS's opinion the information provided in response to a clarification request has the effect of substantially altering the Tender, then FACS may in its discretion, either:
 - a) disregard the information and either issue a revised clarification request or notify the Tenderer that its offer as originally submitted will be assessed; or
 - b) provide the same opportunity to all Tenderers.

31. Financial Assessment

- 31.1 The Tenderer acknowledges that FACS may for the purposes of tender evaluation undertake a financial assessment of the Tenderer and may engage an external provider to carry out the task
- 31.2 Any information provided by the Tenderer in relation to such financial assessment and identified by the Tenderer as confidential will not be disclosed, either in whole or in part, to any party other than NSW Government departments or agencies unless with the prior written consent of the Tenderer.

E. Tender Outcomes

32. Approval and Notification

- 32.1 FACS may accept the whole or any part of any Tender or Tenders including, subject to these Conditions of Tendering, a Non-Conforming Tender or an Alternative Tender.
- 32.2 FACS is not bound to accept the lowest or any Tender or part thereof.
- 32.3 Following FACS's decision, all Tenderers will be notified in writing of the outcome of their Tenders.

33. Acceptance of Tender

- 33.1 Acceptance of a Tender or part tender will be subject to the execution of a formal contract (e.g. FACS Funding Agreement (Terms & Conditions of Agreement)). Until FACS and the successful Tenderer(s) execute a formal contract there will be no legally enforceable agreement concluded between them.
- 33.2 Notice of acceptance is given by hand to the Tenderer or is sent by prepaid post to, or left at, the address provided by the Tenderer in the Tender, or transmitted by facsimile to the Tenderer's facsimile number.
- 33.3 Tenderers should note that prior to finalisation of the contract, FACS may enter into negotiations to finalise contract. The contract will then be formalised by the execution of the Standard Contract and its Annexures and attachments.

34. No Preferred Tender

- 34.1 In the event FACS determines that none of the Tenders submitted is acceptable, FACS may enter into negotiations with one or more selected Tenderers with the aim of

achieving a suitable basis for contracting. This may include negotiations in relation to a Non-Conforming Tender which in FACS's opinion is capable of becoming, through negotiation, a Conforming Tender.

- 34.2 FACS is under no obligation to negotiate with any Tenderer and if all Tenders are rejected then FACS may invite fresh tenders under the same or different criteria.

35. Disclosure of Information

- 35.1 Details of this RFT and the outcome of the tender process will be disclosed in accordance with the requirements of the Government Information (Public Access) Act 2009 (GIPA Act) and Premier's Memorandum 2007-01.

36. Post-Tender Debriefings

- 36.1 The Tenderer may request a debriefing on the assessment of its Tender. This includes a Tenderer to whom a Contract has been awarded. Requests for debriefings should be in writing to the contact officer named in the RFT.
- 36.2 Where the debriefing is in relation to a rejected Tender, the purpose of the debriefing is to explain how the Tender performed against the assessment criteria, rather than in comparison with the successful Tender, with the object of improving future tender responses. It is to be distinctly understood that a debriefing will not be an opportunity to contest the tender outcome.
- 36.3 Debriefings will generally be conducted as face-to-face meetings, and held at FACS premises.

37. [deleted]

38. [deleted]

39. Complaints about the Tender Process

- 39.1 If an organisation believes that the probity of the tender process has been compromised, it may express its concern in writing to:

CONFIDENTIAL

Director, Strategic Procurement
Department of Family and Community Services
Level 4, 2 Cavill Avenue
ASHFIELD NSW 2131

- 39.2 Any formal complaint will be acknowledged in writing. Complaints will be investigated by officers of FACS who are independent of those involved in the actions leading to the complaint. The outcome of the investigation will be advised to the complainant in writing.