

1. Agreement to be bound by RFQ

- 1.1 In consideration of Council:
 - (a) requesting the Supplier to submit a Quote for the Supply; and
 - (b) agreeing to receive a Quote submitted by the Supplier in accordance with, and subject to, this RFQ,
 - (c) the Supplier agrees to be bound by this RFQ.

2. Form of RFQ

- 2.1 A Request for Quote from Council may take any of the following forms:
 - (a) formal Request for Quote document issued by Council directly or via an Electronic Tender Box; or
 - (b) email; or
 - (c) verbal request; or
 - (d) any other form deemed appropriate by Council.

3. Supplier Enquiries

- 3.1 All enquiries by Suppliers must be directed to the Council Contact Officer by the time and date specified in the RFQ.
- 3.2 Council reserves the right not to respond to any enquiry or question.
- 3.3 If the Supplier, or any person acting on the Suppliers behalf, has communications with any other Council Officer, or a Councilor in relation to this RFQ, the Supplier may be excluded from consideration.

4. Alternate Proposals

- 4.1 Alternative Quotes may be submitted in addition to a Conforming Quote.
- 4.2 To be considered a Conforming Quote, a Quote must:
 - (a) be for the Supply specified
 - (b) contain a completed Quotation Form, if applicable
 - (c) contain completed Response Forms, if applicable
 - (d) include any other information required in this RFQ, the Quotation Form and the Response Forms;
 - (e) strictly comply with the Conditions of Contract and Council's Requirements with no departures; and
 - (f) in all other respects comply with this RFQ and all applicable Legislative Requirements.
- 4.3 A Quote that does not comply with Clause 4.2 (including a Quote that contains any deviations from the Conditions of Contract) is an Alternative Quote.
- 4.4 An Alternative Quote must:
 - (a) clearly set out the benefits of the Alternate Quote and how it differs from the Conforming Quote;
 - (b) not constitute a substantial variation but satisfy the basic commercial and performance objectives, technical and legal requirements.
- 4.5 Council may, but is not bound to, consider or accept an Alternative Quote.

5. Lodgment of Quote

- 5.1 Quotes must be submitted by the method advised in the RFQ:
 - (a) where the RFQ specifies lodgment via an Electronic Tender Box, the Quote must be submitted to that Electronic Tender Box.
 - (b) where the RFQ specifies a physical or electronic email address the Quote must be submitted in writing to that address;
 - (c) where the Quote is requested verbally, the Quote may be provided verbally only if Supply Price is less than \$5,000.00; if the Supply Price is equal to or greater than \$5,000.00 the Quote must be provided in writing pursuant to Clause 5.1(b).
- 5.2 Quotes will only be accepted by Council if submitted by the required method before the Closing Time.
- 5.3 Any Quote submitted remains valid and binding upon the Supplier for a period of 90 days from the Closing Time or such later date as may be mutually agreed between the Supplier and Council and must not otherwise be withdrawn by the Supplier.
- 5.4 If the Supplier becomes aware of any error, discrepancy or omission in the Quote, the Supplier cannot submit any correction or additional information without prior consent of Council.

6. Reliance by Supplier

- 6.1 In submitting a Quote, each Supplier warrants that, at its own cost and expense, it has:-
 - (a) satisfied itself with respect to all conditions relating to the contract, risks, contingencies and any other matters which may impact on the Quote;
 - (b) acted independently, completed its own investigations and assessments about all matters relevant to this RFQ process and not relied upon any representation made by Council;

- (c) verified any information provided by, or on behalf of Council, and satisfied itself that the information is adequate and accurate;
- (d) satisfied itself with respect to the accuracy, completeness and sufficiency of its Quote.

- 6.2 Council will not be responsible for payment of, and the Supplier will not have any claim against Council, or any employee, agent or contractor of council (whether in contract, tort (including negligence) equity, under statute or otherwise) arising from any costs, expenses, losses or other liabilities occurred by the Supplier a result of this RFQ process.

- 6.3 The Supplier agrees and acknowledges that:

- (a) if specified by the Council in the Request for Quote, the Contract will include General Conditions of Contract produced by Standards Australia Limited (ACN 087 326 290) (Australian Standard Contract) as amended;
- (b) the Council will provide to the Supplier as part of the Request for Quote the Contract Amendments and Particulars;
- (c) the Council will not and is not required to provide the Supplier with a copy of the unamended Australian Standard Contract as part of the Request for Quote and the Supplier shall be responsible for obtaining at its cost a copy of the unamended Australian Standard Contract; and
- (d) the Council shall provide an Australian Standard Contract incorporating the agreed Contract and Amendment Particulars to the successful Supplier and such document shall form part of the Contract notwithstanding any inconsistency between it and the unamended Australian Standard Contract obtained by the Supplier.

7. Councils Discretion

- 7.1 Council in its sole and unfettered discretion, reserves the right to:-
 - (a) vary, amend, terminate, suspend or reinstate the RFQ process at any time;
 - (b) change the terms and conditions applicable to the RFQ process, including the Conditions of Contract;
 - (c) exercise discretion when evaluating Quotes, and use any criteria it sees fit in accordance with the requirements of the Local Government Act 2009 (Qld) and its regulation;
 - (d) consider or refuse to consider a Quote submitted after the Closing Time;
 - (e) consider or refuse to consider a Quote which does not conform strictly with Council's RFQ;
 - (f) interview, request clarification or negotiate with one or more Suppliers and allow any Supplier to vary its Quote after the Closing Time;
 - (g) award the RFQ as a whole, in parts, to one or more Suppliers, or not at all;
 - (h) carry out all or any part of the Supply in a manner that Council sees fit, either itself or by engaging another to do so, whether they participated in the RFQ process or not;
 - (i) carry out any other procurement process for the Supply.
- 7.2 The Supplier will not make any claim in connection with a decision by Council to exercise or not exercise any right in relation to the RFQ process.

8. Acceptance of Quote

- 8.1 Council is not obliged to accept the lowest, or any Quote, and may accept the Quote most advantageous to it.
- 8.2 Council reserves the right to accept or reject a Quote in part or in whole.
- 8.3 No Quote shall be taken as accepted and no Contract will be formed, until the Supplier;
 - (a) executes and returns the Formal Instrument of Agreement as referred to in the RFQ; or alternatively
 - (b) receives a Council issued Purchase Order to the Price of the Supply.

9. Conflict of Interest

- 9.1 A Supplier must not, and must ensure that its employees, agents, and advisers do not, place themselves in a position that may or does give rise to an actual, potential or perceived conflict of interest between the interests of Council and the Supplier's interest during the RFQ process.
- 9.2 If during the RFQ process a conflict of interest arises, or appears likely to arise, the Supplier must notify Council immediately in writing and take such steps as Council may reasonably require to resolve or otherwise deal with the conflict. If the Supplier fails to notify Council or is unable or unwilling to resolve or deal with the conflict as required, the Quote may be excluded from further consideration.

10. Warranties

- 10.1. In submitting its Quote, the Supplier warrants:
- (a) the accuracy of all information, completeness and sufficiency of its Quote;
 - (b) the appropriateness and sufficiency of the Price and timeframes offered by the Supplier in its Quote to carry out the Supply;
 - (c) that it has all necessary experience, skill and resources to perform and carry out its obligations in accordance with this RFQ and its Quote;
 - (d) that it is able to commence the Supply as required by Council;
 - (e) that its employees, contractors or agents will comply with all Legislative Requirements relative to providing the Supply; and
 - (f) that it is willing to accept the Conditions of Contract as contained or described in this RFQ;
- 10.2. The warranties in this section are provided as at the date of the Supplier's response to the RFQ and on an ongoing basis until the later of Council notifying the Supplier that its Quote has been rejected and expiry or termination of any Contract entered pursuant to the RFQ Process ("relevant period").
- 10.3. The Supplier warrants that it will immediately notify Council if it becomes aware that any warranty made in this section was inaccurate, incomplete, out-of-date or misleading in any way when made, or becomes inaccurate, incomplete, out-of-date or misleading in any way, during the relevant period.

11. Confidentiality

- 11.1. The Supplier must keep confidential all information which it obtains as part of the RFQ Process, not use it except for the purpose of responding to the RFQ, and not disclose it except to its personnel on a need to know basis for the purpose of responding to the Request for Quote, or with Council's consent, or to the extent required by Law, or to its professional advisors.

12. Privacy

- 12.1. The Supplier is to comply with the *Information Privacy Act 2009* (Qld).
- 12.2. By submitting a Quote, the Supplier warrants that it has obtained the consent of each individual whose Personal Information is included in the Quote for:
- (a) the inclusion of their Personal Information in the Quote;
 - (b) the use of the Personal Information by Council for the purpose of evaluating and awarding the Quote; and
 - (c) the disclosure of the Personal Information to other parties (including professional advisors) as may be involved in assisting Council with the evaluation of the Quote.
- 12.3. The Supplier must indemnify Council against any claim, damage or loss (including legal costs and expenses) that Council may incur as a consequence of a breach by the Supplier of the warranty in Clause 12.2.
- 12.4. Any Personal Information exchanged between the Supplier and Council must be dealt with in accordance with the *Information Privacy Act 2009* (Qld).
- 12.5. The Supplier must immediately notify Council upon becoming aware of any breach of this Clause 12.
- 12.6. This clause survives the expiry or termination of the Request for Quote.

13. Governing Law and Jurisdiction

- 13.1. The RFQ process is governed by the laws in force in Queensland. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland and the courts of appeal from them.

14. Invoicing and Payment

- 14.1 Council will, subject to the terms of the Agreement, pay the Supplier an amount not exceeding the Price.
- 14.2 The Supplier may only invoice Council after completion of the Supply to the reasonable satisfaction of Council. Invoices must include Council's Purchase Order number, the Authorised Officer who ordered the Supply, a detailed description of the Supply performed, the Price payable and any other information reasonably required by Council.
- 14.3 Subject to clause 14.4.4 and **Error! Reference source not found.**, Council will pay the amount of invoices issued by the Supplier under clause **Error! Reference source not found.** within 30 days from the end of month in which the invoice is received, except where Council disputes the invoice, in which case if the resolution of the dispute determines that Council is to pay an

amount to the Supplier, Council will pay that amount upon resolution of that dispute.

- 14.4 Council may reduce any payment due to the Supplier under the Agreement by any amount for which the Supplier is or may be liable to Council. This does not limit Council's right to recover those amounts in other ways.

- 14.5 The Supplier must ensure all Claims for payment arising out of or in connection with the Agreement are issued by the Supplier to FCRC within 12 months after the date upon which the Supply is completed (12 Month Period). Compliance with this clause **Error! Reference source not found.** is a condition precedent to any Claim, and FCRC shall have no liability for any Claim to the extent it is made after the 12 Month Period.

15. Definitions

- 15.1 In this RFQ:

Closing Time means the time and date specified in the RFQ by which Quotes must be submitted by the Supplier and received by Council.

Conditions of Contract means the Conditions of Contract attached or referred to within the RFQ documents. Where there is no reference to specific Conditions of Contract, the Councils Standard Purchase Order Terms and Conditions apply.

Contact Officer means the person specified in the RFQ.

Contract means the Formal Instrument of Agreement between Council and the Supplier.

Contract Amendments and Particulars means a document supplied by the Council as part of the Request for Quote which details any amendments the Council proposes to an Australian Standard Contract.

Council means the Fraser Coast Regional Council ABN 19 277 850 689 of PO BOX 1943 Hervey Bay QLD 4655.

Electronic Tender Box means Vendor Panel, or other electronic tender box as specified in the RFQ.

Formal Instrument of Agreement means the Contract, Conditions of Contract, Service Agreement or Letter of Acceptance referred to in the RFQ

Legislative Requirements includes:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory applicable to the Supply
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Supply; and
- (c) fees and charges payable in connection with the foregoing.

Price means the rates or prices specified in the Suppliers Quote for which the Supplier offers to carry out the Supply.


Quote means a quote submitted by the Supplier pursuant to this RFQ Process and may include an Alternative Quote.

RFQ and Request for Quote means any verbal request or document issued by Council for the carrying out of the Supply.

Supply means the goods, services and works, as applicable, that are being procured pursuant to this RFQ.

Supplier means the entity that participates in the Request for Quote Process, whether or not they submit a Quote.

 procurement@frasercoast.qld.gov.au

 1300 79 49 29

 <https://www.frasercoast.qld.gov.au/procurement>