

MURRAYLANDS TOURISM PARTNERSHIP

BID RULES

NOTE: The Bid Rules apply unless otherwise stated in the invitation documents

CONTENTS

1. PROCUREMENT PROCESS.....	2
2. BRIEFINGS/SITE VISITS	2
3. CLARIFICATION.....	2
4. FORMAT, CONTENT AND SUBMISSION OF BIDS.....	2
5. PRESENTATION BY THE TENDERERS.....	3
6. PROBITY.....	3
7. RESERVATION OF RIGHTS	4
8. PRINCIPAL’S EXPECTATIONS	4
9. TENDERERS’ EXPECTATIONS.....	4
10. ACCEPTANCE OF TENDER	5
11. CONFIDENTIALITY.....	5
12. COPYRIGHT	5
13. COST OF PREPARATION OF BIDS.....	6
14. CONTRACTING INFORMATION	6
14.1 Environmental Care	6
14.2 Occupational Health, Safety and Welfare.....	6
14.3 Disclosure of Government Contracts.....	6
14.4 Allocation of Risk - Liability	6
14.5 STATE FEDERAL COOPERATION ON TRADE PRACTICES MATTERS.....	7
ANNEXURE A	8

1. **PROCUREMENT PROCESS**

This procurement process does not give rise to or amount to a process contract whether a tender is submitted in response to this Invitation or not. (A process contract means a contract about the tendering process.)

After considering any responses submitted in accordance with these Bid Rules, the Principal will decide whether or not to enter into negotiations with one or more preferred tenderers.

2. **BRIEFINGS/SITE VISITS**

If the Principal considers it necessary, the Principal may conduct briefings and / or site visits in relation to this process.

The Principal will advise in the Invitation if the tenderers attendance at a briefing or site is a prerequisite for submitting compliant tenders.

The Principal may also require a tenderer to inspect or visit a site for the purpose of examining and understanding the requirement prior to tendering.

3. **CLARIFICATION**

Until the Last Queries Date (refer Invitation) you may seek clarification of any matters relating to this Invitation by directing enquiries to the Contact Person.

You may expect that in response to a query submitted before that date the Principal will either provide an answer or provide written notice that no answer is given.

The Principal reserves the right to inform all other tenderers of the question or matter raised and the response given, but may at its discretion choose not to do so.

4. **FORMAT, CONTENT AND SUBMISSION OF BIDS**

The Principal expects that the tender:

- will be in English;
- will quote prices in Australian dollars;
- will quote prices that are inclusive and, in relation to GST, will state where the GST is applicable and shall show that amount separately; and

A tender will be considered to have been delivered when actually received at the address specified in Invitation to Tender, whatever the mode of delivery. Tenders may be posted, but tenderers take the risk of any loss or delay in the course of the post.

5. **PRESENTATION BY THE TENDERERS**

The Principal may request presentations by tenderers, where appropriate, of your bid but need not make the same request of all tenderers.

6. **PROBITY**

The Principal expects that you will:

- declare any actual or potential conflict of interest;
- not seek to employ or engage the services of any person who has a duty to the Principal as an adviser, consultant or employee (or former adviser, consultant or employee) in relation to this process;
- not collude with any potential tenderer;
- comply with all laws in force in South Australia applicable to the process including the *Trade Practices Act 1974 (Cth)*;
- disclose whether acting as agent, nominee or jointly with another person and disclose the identity of the other person;
- not offer any incentive to, or otherwise attempt to influence, any employee of the Principal or any member of an evaluation committee at any time; and
- not make any news releases or responses to media enquiries and questions pertaining to this process without the Principal's written approval.

If you act contrary to these expectations, the Principal reserves the right (regardless of any subsequent dealings) to:

- terminate negotiations;
- terminate consideration of your bid; and
- terminate any contract between you and the Principal in relation to the Project without any obligation on the Principal to make any payment to you.

7. RESERVATION OF RIGHTS

The Principal reserves the right to:

- invite any person or entity to submit a bid;
- extend the bid closing date;
- vary the Statement of Requirement and/or the Specifications at any time, subject to the Principal first giving each tenderer the opportunity to respond to the variations;
- allow a tenderer to change its bid before the completion of evaluation of tenders, but only if the same opportunity is given to all tenderers;
- consider a bid submitted other than in accordance with these Bid Rules;
- consider an incomplete bid;
- exclude from consideration a bid that has not been submitted by the Closing Time;
- abandon this invitation process at any time;
- clarify any aspect of a bid after the closing date;
- seek the advice of external consultants to assist the Principal in the evaluation or review of bids;
- make enquiries of any person or entity to obtain information about the tenderer and its bid;
- seek information from any tenderer;
- following evaluation of bids, invite revised bids from one or more tenderers;
- following evaluation of bids, negotiate with one or more tenderers;
- negotiate with a tenderer for the provision of any part of the requirement, and to negotiate with any other tenderer with respect to the same or other parts of the requirement, and to enter into one or more contracts for all or any part of the requirements;
- enter into negotiations with any other person or entity who is not a tenderer;
- discontinue negotiations at any time with any tenderer; and
- propose revised or replacement contract terms at any stage in this procurement process in substitution for, or in addition to, the terms and conditions included.

8. PRINCIPAL'S EXPECTATIONS

The Principal expects that if you submit a bid:

- you have the necessary skills, knowledge and experience to comply with the Statement of Requirements and/or Specifications;
- you have fully informed yourself of all facts and conditions relating to this process and the Statement of Requirements and/or Specifications; and
- all prices submitted will be fixed (unless otherwise specifically indicated).

9. TENDERERS' EXPECTATIONS

Tenderers can expect that the Principal will:

- preserve the confidentiality of your confidential information (subject to rule 12 concerning confidentiality);
- afford every tenderer the opportunity to compete fairly;
- subject to the Principal's right to terminate this process, consider a bid which is submitted in accordance with these Rules by a tenderer who has:
 - complied with the Principal's expectations as to probity;
 - provided the information required in this stage of the process as set out in this Invitation; and
 - co-operated with bid rules; and
 - submitted its bid by the Closing Time.

10. ACCEPTANCE OF TENDER

- The Principal is not obliged to accept any tender.
- If the Principal does accept a tender it is not obliged to accept the lowest priced tender.
- The Principal may consider or accept (at the Principal's sole discretion) any tender including without limitation a late tender or the tender of a tenderer who has failed to submit a tender in accordance with these bid rules.
- No acceptance of a tender nor any invitation to negotiate or to make an offer will be effective to constitute a contract or to create any legitimate expectation on the part of the tenderer unless a formal written contract is executed by both parties.
- Notification to a tenderer that it is the preferred tenderer will not constitute an acceptance of the tender but an invitation to negotiate.

11. CONFIDENTIALITY

You and the Principal may disclose information to any consultant engaged for the purpose of this process if the consultant is required to preserve the confidentiality of that information.

Information supplied by or on behalf of the Principal is confidential to the Principal and you are obliged to maintain its confidentiality.

The Principal understands the need to keep commercial matters confidential in appropriate circumstances, but reserves the right to disclose some or all of the contents of your bid and related information:

- if required to do so by a constitutional convention; or
- in order that the relevant Minister may discharge their duties and obligations to Parliament and the South Australian Government; or
- to the Australian Competition and Consumer Commission (ACCC) if the Principal reasonably suspects, or is notified by the ACCC that it reasonably suspects, that there is cartel conduct or unlawful collusion in relation to this tender process (whether or not the suspicion relates to your tender),

and any condition in a bid that purports to prohibit or restrict the Principle's right to make such disclosures cannot be accepted.

12. COPYRIGHT

By submitting a bid, you will be taken to:

- license the Principal to reproduce for the purposes of this process the whole or any portion of the bid despite any copyright or other intellectual property right that may subsist in the bid; and
- transfer ownership in the documents and any other materials constituting the bid to the Principal.

13. **COST OF PREPARATION OF BIDS**

Tenderers are responsible for the cost of preparing and submitting a bid and all other costs arising out of the process.

14. **CONTRACTING INFORMATION**

14.1 ENVIRONMENTAL CARE

Tenderers are encouraged to develop products and processes with due regard for environmental considerations. Environmental care involves the conservation of resources and raw material, priority to value-added products and services, energy efficiency, production of multiple use products, use of recycled materials, and reduction of both waste and waste disposal costs.

14.2 OCCUPATIONAL HEALTH, SAFETY AND WELFARE

The contractor selected (if any) is required to comply with the *Occupational Health, Safety and Welfare Act 1986* and the *Occupational Health, Safety and Welfare Regulations 2010*. The tenderer may be required to provide evidence of safety management records and systems on request by the Principal.

14.3 DISCLOSURE OF GOVERNMENT CONTRACTS

Tenderers are to be aware that if a contract is entered into, the Principal may disclose that contract and/or information in relation to it in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request.

14.4 ALLOCATION OF RISK - LIABILITY

In accordance with Department of Treasury and Finance requirements, the Principal expects that there will be no limitation of liability in any contract, which may result from this Invitation except where the tenderer is a person or body to whom a scheme approved under the Professional Standards Act 2004 applies.

You are required to state whether you are prepared to agree with the Principal's position or not.

If you are not prepared to agree with the Principal's position, then you must include in your bid full details of the position on limitation of liability that you propose.

Any details provided by you in response to this requirement will be taken into account in the evaluation of your bid.

Where a scheme approved under the Professional Standards Act 2004 applies to you, you must include in your bid full details of such a scheme.

Where a scheme does not apply under the Professional Standards Act in relation to the engagement by a public authority of a supplier and it is intended that the liability of the supplier is to be limited in some manner, the following prescribed heads of liability must not be limited:

- for personal injury including sickness and death;
- for loss of or damage to tangible property;
- for infringement of intellectual property rights;
- for any liability to a third party arising from any negligent or wrongful act or omission of the supplier, its employees, agents or subcontractors, or arising from any breach of the supplier's contractual obligations to the public authority;
- for an intentional tort;
- for a breach of trust; and
- for fraud or dishonesty.

14.5 STATE FEDERAL COOPERATION ON TRADE PRACTICES MATTERS

You must submit with your tender a signed declaration, in the form set out in Annexure A, that:

- (a) confirms that your tender is independent and that there has not been any unlawful collusion with any other tenderer or party in connection with this tender process; and
- (b) clearly indicates the total value of the goods and/or services to be provided by sub-contractors, and where that value exceeds either of \$1,000,000 (GST inc) or 25% of the total value of your tender, your declaration must include a complete list of all sub-contractors, the value, and the nature of the work to be provided under each sub-contract.

If your tender is submitted jointly with another party or parties then each joint tenderer must provide a signed declaration in the form set out in Annexure A.

The requirement of independence in sub-clause (a) shall not apply as between the joint tendering parties.

If you do not provide the duly completed declaration or if any part of your declaration is found to be false the Principal reserves the right (regardless of any subsequent dealings) to:

- terminate negotiations;
- terminate consideration of your bid; and
- terminate any contract between you and the Principal in relation to the Project without any obligation on the Principal to make any payment to you.

ANNEXURE A

Declaration in Relation to Unlawful Collusion

Re: (“the Tender”)
[insert name of Tender]

I,of
[insert name and address of declarant]

do hereby declare as follows:

1. I hold the position ofwithinPty Ltd (“the Tenderer”) and that I am authorised to provide this declaration on its behalf.
2. I confirm that the tender submitted by the Tenderer is independent and that there has not been any unlawful collusion with any other tenderer or party in connection with this tender process. This clause does not apply to any formal joint venture contractual arrangement entered into between the Tenderer and any other person(s), the details of which have been provided to the Principal as part of the tender submitted by the Tenderer.
3. I confirm that the total value of the goods and/or services to be provided by sub-contractors, to the extent known at the time of making this declaration, is \$..... .
4. [*where that value exceeds either of \$1,000,000 (GST inc) or 25% of the total value of the tender*] Attached hereto is a complete list of all sub-contractors, the value, and the nature of the work to be provided under each sub-contract, to the extent known at the time of making this declaration.
5. I understand that if any part of this declaration is found to be false, the Principal reserves the right (regardless of any subsequent dealings) to:
 - terminate negotiations with the Tenderer;
 - terminate consideration of the Tenderer’s bid; and
 - terminate any contract between the Tenderer and the Principal in relation to the Project without any obligation on the Principal to make any payment to the Tenderer.

..... /...../ 20 ...

Signature

Date

Note: If your tender is submitted jointly with another party or parties then each joint tenderer must provide a signed declaration in the form set out in Annexure A.