

Model Waste and Recycling Collection Contract Section B: Conditions of Tendering

© State of NSW, Environment Protection Authority.

The Environment Protection Authority (EPA) and the State of NSW are pleased to allow this material to be reproduced, for educational or non-commercial use, in whole or in part, provided the meaning is unchanged and its source, publisher and authorship are acknowledged. Specific permission is required for the reproduction of images.

Disclaimer:

The EPA has compiled this document in good faith, exercising all due care and attention. The EPA does not accept responsibility for any inaccurate or incomplete information supplied by third parties. No representation is made about the accuracy, completeness or suitability of the information in this publication for any particular purpose. The EPA shall not be liable for any damage which may occur to any person or organisation taking action or not on the basis of this publication. Readers should seek appropriate advice about the suitability of the information to their needs.

Published by:

NSW Environment Protection Authority (EPA)
59–61 Goulburn Street, Sydney
PO Box A290
Sydney South NSW 1232

Report pollution and environmental incidents

Environment Line: 131 555 (NSW only) or info@environment.nsw.gov.au

See also www.epa.nsw.gov.au/pollution

Phone: +61 2 9995 5000 (switchboard)

Phone: 131 555 (NSW only – environment information and publication requests)

Fax: +61 2 9995 5999

TTY users: phone 133 677, then ask for 131 555

Speak and listen users: phone 1300 555 727, then ask for 131 555

Email: info@environment.nsw.gov.au

Website: www.epa.nsw.gov.au

ISBN 978-1-76039-11-3

EPA 2015/0592

October 2015

[Click here and type Council name and/or logo]

Section B

Conditions of Tendering

Contract no:

[Click here and type Contract number]

Contract for:

[Click here and type title]

Enquiries on the contents of this document should be directed to:

[Click here and type name]

Telephone:

Facsimile:

Email:

[Click here and type Council or company]

[Click here and type telephone number]

[Click here and type facsimile number]

[Click here and type email address]

Table of Contents

1. DEFINITIONS	1
2. GENERAL	1
2.1 Tender Documents.....	1
2.2 Addenda.....	2
2.3 Precedence of Documents	2
2.4 Type of Contract.....	2
2.5 Work to be Performed	2
2.6 Tenderer to be Informed.....	2
2.7 Continuity of Employment.....	3
2.8 Enquiries	3
2.9 Tender Briefing.....	3
2.10 Discrepancies and Omissions	3
2.11 Eligible Tenderers	3
2.11 Eligible Tenderers	4
2.12 Extension of Time for the Submission of Tenders.....	4
2.13 Tender.....	4
2.14 Tender Validity Period	4
2.15 Tenderer Not to Solicit the Council and its Employees	4
2.16 Release of Tender Details	5
2.17 Public Access to Tender Information	5
2.18 In-House Tender	5
2.19 General	5
3. TENDER PREPARATION AND LODGEMENT	6
3.1 Conforming Tenders.....	6
3.2 Non-conforming Tenders.....	6
3.3 Tender Lodgement.....	6
3.3.1 Lodgement Method 1	6
3.3.2 Lodgement Method 2.....	6
3.4 Late Tenders	7
3.5 Number of Copies of Tender	7
3.6 Ownership of Tenders and Tender Information.....	7

4. ACKNOWLEDGMENT BY TENDERER	7
5. ACCEPTANCE OF TENDER	8
6. CONTRACT	8
7. USE OF SUBCONTRACTORS	8
8. PROBITY OF TENDER PROCESS	9
9. PROVISION OF INFORMATION BY TENDERERS	9
9.1 Tender Return Schedules	9
9.2 Conflict of Interest	9
9.3 Information for Evaluation	9
10. TIMING OF TENDER	9
11. CONFIDENTIALITY	10
11.1 Control of Confidential Information	10
12. EVALUATION CRITERIA – CHECKLIST FOR TENDERERS	10

1. Definitions

In these Tender Documents, the following terms shall have the meanings indicated:

‘Addenda’ means addenda to this Request for Tender issued by the Council from time to time. Addenda may be issued to amend, alter, clarify, add to or remove from the form and contents of the Request for Tender or to effect modifications to the Request for Tender.

‘Closing Date’ means the last date for lodgement of Tenders as specified in the Conditions of Tendering or such later date as may be notified in writing to the Tenderer by the Council.

‘Closing Time’ means the last time for lodgement of Tenders as specified in the Conditions of Tendering or such later time as may be notified in writing to the Tenderer by the Council.

‘Conditions of Tendering’ means the conditions of tender set out in this document.

‘Confidential Information’ includes all information not in the public domain (otherwise than through breach of the confidentiality requirements of the Conditions of Tendering) provided by the Council or a Tenderer to the other which is in the nature of commercial-in-confidence and so identified by the Council or the Tenderer.

‘Request for Tender’ means all the documents issued by the Council which are referred to in Clause 2.1 of these Conditions of Tendering.

‘Section’ means an identified Section of the **Tender Documents**.

‘Services Commencement Date’ means the date specified at Item 3 (a) of the Annexure to Section C – Conditions of Contract and is the date on which the Contractor is to commence providing the Services.

‘Tender’ includes any response to the Request for Tender signed by the Tenderer comprising the Tender Return Schedules and all required documentation and information.

‘Tender Box’ means the Tender box located at the place specified in the Conditions of Tendering.

‘Tenderer’ means a person or corporation who lodges a Tender in accordance with this Request for Tender.

‘Tender Evaluation Panel’ means a panel appointed by the Council to evaluate Tenders.

Terms which are used in these Conditions of Tendering which are defined in the Conditions of Contract shall have the meaning ascribed to them in that document

2. General

2.1 Tender Documents

The Tender Documents comprise the following:

- Section A – Information for Tenderers
- Section B – Conditions of Tendering
- Section C – Conditions of Contract
- Section D – Specification
- Section F – Tender Return Schedules
- Section H – Formal Instrument of Contract
- Any addenda issued for this tender.

Expressions and words used in the Tender Documents have the meanings ascribed to them in Clause 1 of the Conditions of Tendering (Section B of the Tender Documents) and Clause 1.2.1 of the Conditions of Contract (Section C of the Tender Documents).

2.2 Addenda

- (a) Addenda may be issued prior to Closing Date. Each addendum will be issued to all prospective Tenderers whom the Council knows have downloaded or purchased the tender documents and, upon issue, will form part of the Contract Documents.
- (b) Addenda shall not be issued within seven (7) business days prior to the Closing Date, unless deemed material.
- (c) Tenderers shall not ask questions within 10 business days prior to the Closing Date, unless deemed material.
- (d) Receipt of each addendum must be acknowledged by the Tenderer by signing and returning a copy of the covering letter of issue as part of the tender submission.
- (e) Any of the Tender Documents may be amended to reflect the requirements of any Addenda.

2.3 Precedence of Documents

To the extent that there is any inconsistency between:

- (a) Any Addenda and the other Tender Documents, the Addenda shall prevail
- (b) if two or more Addenda are issued in relation to a matter, the last issued Addenda shall prevail.

2.4 Type of Contract

This is a [Click here and Type Contract type e.g schedule of rates per Service-Entitled Premise] Contract.

2.5 Work to be Performed

The Services to be provided are described in Section D – the Specification.

Tenderers should read the Specification fully to ascertain the exact nature of the work to be performed, and the terms on which it is to be performed, as the agreement will be evidenced solely by the Contract.

Tenderers **must** complete and return the Tender Return Schedules and may attach supporting documentation.

2.6 Tenderer to be Informed

Tenderers shall, prior to submitting their Tender, become acquainted with the nature and extent of the Contract and the services to be undertaken, and make all necessary examinations, investigations, inspections and deductions.

No claims arising from a failure to take any such actions will be considered and the Council does not accept any responsibility if a Tenderer fails to make its own enquiries, interpretations, deductions and conclusions when preparing its tender.

The Tenderer should satisfy itself that it has sufficient and complete information to prepare its tender and no claims will be accepted that information is missing or incomplete once tenders have been submitted.

Tenderers are required to familiarise themselves with all regulatory requirements relating to the Services and the elements necessary to perform the Services.

This includes the extent, if any, of any GST payable for the supply of any goods and services pursuant to the Contract.

Tenderers must form their own assessment of the amount of Services, materials, plant and all other items necessary to perform the services that meets the true aims and objectives of the proposed Contract and of the conditions, difficulties and hazards that may attend the performance of the Services.

The Council will accept no responsibility for a Tenderer's failure to make its own enquiries, interpretations and conclusions from information contained within the Tender Documents or otherwise.

2.7 Continuity of Employment

Tenderers are required to address the provisions of the NSW Government Local Government (General) Regulation Part 7, Division 2, Clause 170, subclauses 1 (e) and 1A which relate to continuity of employment provisions for existing workers under existing contracts for domestic or other waste management services. Refer to Section F – Schedule 25 'Continuity of Employment'.

2.8 Enquiries

Any enquiries regarding the services specified in the Tender Documents should be directed to the nominated contact person(s) as listed at the front of these Conditions of Tendering.

No statement made by the nominated contact person(s), or any other member of the Council should be construed as modifying these Conditions of Tendering or any other Tender Documents, unless confirmed in writing by the nominated contact person(s).

2.9 Tender Briefing

A meeting with prospective Tenderers will be held:

[\[Click here and type date\]](#) [\[Click here and type time e.g. 9:00 a.m. to 11:30 a.m.\]](#),

at [\[Click here and type location\]](#), [\[Click here and type street address\]](#).

Tenderers are strongly advised to attend.

The purpose of the meeting will be to brief Tenderers on important aspects of the Tender, to clarify any aspects of the Tender Documentation and to respond to queries from Tenderers.

Responses to questions, any changes to the documentation, or important issues covered at the meeting will be notified in writing to all those registered as having taken out copies of the Tender Documents.

2.10 Discrepancies and Omissions

Should a Tenderer find discrepancies, errors and/or omissions in the Request for Tender, or should there be any doubt as to their meaning, the Tenderer should at once notify in writing the contact person nominated in the Request for Tenders.

Option 1 Open Tender

2.11 Eligible Tenderers

This is an open tender, open to any organisation able to demonstrate to the selection panel that it is able to supply the Services described in these documents.

Or

Option 2 Selective Tender

2.11 Eligible Tenderers

This is a selective tender available only to those Organisations that submitted an Expression of Interest and pre-qualified as a prospective Tenderer for the provision of Services described in these documents.

2.12 Extension of Time for the Submission of Tenders

The Council, at its absolute discretion, may extend the Closing Date for the submission of Tenders in accordance with the tendering requirements under the *Local Government Act 1993*. A Tenderer may request the Council to extend the Closing Date for the submission of Tenders by written application to the nominated contact person(s). Any such requests must be received by the nominated contact person(s) at least ten (10) business days prior to the Closing Date, and must provide sufficient reasons to support the request.

2.13 Tender

The Tender will comprise the attached Tender Return Schedules duly completed by the Tenderer. Unless indicated otherwise in the Request for Tender, a Tenderer must complete all parts of the Tender Return Schedules and submit an offer to carry out the work under the Contract in accordance with the Request for Tender. The Council may reject any Tender which does not provide all the required information.

Tenderers must submit a Tender by completing and signing Tender Return Schedule 1 (Tender Form – Formal Offer) in the manner as follows:

- (a) If the Tenderer is a corporation, in accordance with Section 127 of the Corporations Act 2001.
- (b) If the Tenderer is an individual, by the person tendering and the signature must be witnessed.
- (c) If the Tenderer is an unincorporated joint venture or partnership (including a business or trade name), each member of the joint venture or partnership must execute the Tender in the manner set out in Clauses 2.13(a) and 2.13(b) of the Conditions of Tendering.

The Tenderer may attach to the Tender Return Schedules any additional documentation that it wishes to submit in support of its Tender.

2.14 Tender Validity Period

Any Tender shall be an irrevocable offer by the Tenderer to perform the Services on the terms of the draft Contract and shall clearly state that the offer is such an offer and is subject to the terms and conditions set out in these Conditions of Tendering. The Tender will remain open for acceptance by the Council for a period of **[Click here and type number of days Tender held open in words e.g. ninety]** **([Click here and type number of days in numerals e.g. 90])** calendar days from the Closing Date.

2.15 Tenderer Not to Solicit the Council and its Employees

The Tenderer and its representatives must not interfere or attempt to interview or to discuss this tender with Councillors or employees of the Council, other than the nominated contact person(s). The council reserves the right to reject any tender submitted by a Tenderer which contravenes this Clause.

2.16 Release of Tender Details

Information provided in this Request for Tender or imparted to any Tenderer as part of the tendering process must only be used for the purpose of preparing and submitting a tender response. Receipt of this document implies acceptance of this condition.

The Council reserves the right to disclose any or all information provided by Tenderers where disclosure is:

- (a) required or compelled by any order of a Court
- (b) required or compelled by any law
- (c) required or compelled by notice validly issued by any Authority
- (d) necessary for the conduct of any legal proceedings
- (e) necessary for the provision of advice by the Council's legal advisers, accountants or other consultants
- (f) necessary for the evaluation of the Tenders.

Tenderers should note that the name of each Tenderer will be presented in Council reports and may be made public. This will include the apparent order of tenders on the basis of tendered price but without the specific amounts or rates tendered. Some broad pricing in the form of estimated annual costs to Council may be included. The names of Tenderers will also be publicly posted in accordance with tendering requirements under the *Local Government Act 1993*.

A Tenderer is advised not to enter into any commitments unless advised in writing by the Council that its Tender has been accepted and a Contract has been entered into with the Council.

The details of the Contract will be published on Council's website in the contracts register which is required to be maintained in accordance with the *Government Information (Public Access) Act 2009*.

2.17 Public Access to Tender Information

Information supplied by a Tenderer will not be treated as commercially sensitive or confidential unless specifically requested by the Tenderer and clearly marked commercial-in-confidence. Information received by Council may be subject to disclosure to the public under the *Government Information (Public Access) Act 2009*.

2.18 In-House Tender

There [Click and type will or will not] be an in-house tender submitted for this Contract from the Council.

2.19 General

This Tender is conducted in accordance with the tendering requirements under the *Local Government Act 1993*. The Council is also obliged to consider the provisions of the Tendering Guidelines published by the Department of Local Government in 2009 (Circular 09-39).

3. Tender Preparation and Lodgement

3.1 Conforming Tenders

To submit a conforming Tender, the Tenderer must:

- (a) comply with all of the requirements contained in the Tender Documents
- (b) complete and execute all the Tender Return Schedules relevant to its offer in the manner indicated.

3.2 Non-conforming Tenders

A non-conforming Tender is one that does not comply with all the requirements of Clause 3.1. Where a non-conforming Tender is submitted, the following applies:

- (a) The Council may at its sole discretion consider a non-conforming Tender other than where this is in conflict with the tendering requirements under the *Local Government Act 1993*.
- (b) The Council will only consider a non-conforming Tender where it is submitted with a conforming Tender, unless the non-conformity is merely technical in nature.
- (c) Tenderers submitting a non-conforming Tender shall fully detail any variance from the requirements of the Tender Documents.
- (d) Non-conforming tenders will be assessed in accordance with the evaluation criteria specified in Clause 12 of the Conditions of Tendering.

Communication by the Council on a Tender does not imply that the Tender is a complying Tender.

3.3 Tender Lodgement

3.3.1 Lodgement Method 1

The Tender is to be deposited on paper in the Tender Box located at:

[Click here and type location of Tender Box]

[Click here and type street address of Tender Box]

prior to [Click here and type Closing Time e.g. 9:00 a.m. or 5:00 p.m.] 'Closing Time' on the [Click here and type Closing Date] 'Closing Date' for submission of Tenders.

An electronic version of the Tender on disc is to be provided with the paper version of the Tender.

If this Request for Tender has been downloaded by the Tenderer via the TenderLink portal then the Tender **must** be lodged via the TenderLink process in a manner which will enable transmission of the **complete** Tender by the Closing Time on the Closing Date. Tenderers are reminded that the uploading of their Tender may take some time and allowance should be made for that period to ensure receipt of their Tender as required by these Conditions of Tendering.

3.3.2 Lodgement Method 2

Facsimile and Electronic Tenders

Tenders received by facsimile will not be accepted. Tenders must be submitted by electronic means to **Error! Bookmark not defined.** be accepted.

If Council will accept the tender by electronic means, the Tender must be transmitted such that it will be received by the Council or Council's receiving agent in its entirety not later than the Closing Time on the Closing Date.

3.4 Late Tenders

Tenders received after the Closing Time on the Closing Date will be dealt with in accordance with the tendering requirements under the *Local Government Act 1993*.

3.5 Number of Copies of Tender

Even if it's tender is submitted by electronic means (where this is permitted by Clause 3.3) the Tenderer is required to lodge an original Tender plus **[Click here and type number in words e.g. two]** (**[Click here and type number in numerals e.g. 2]**) copies, each of which shall be certified by the Tenderer to be true copies (including copies of all supporting documentation). If there is any discrepancy between the electronic version and the original Tender, the electronic version shall prevail.

The original Tender and copies should be despatched to the Council so as to arrive there not later than 3 Business Days after the Closing Date.

3.6 Ownership of Tenders and Tender Information

Tenders lodged by the Tenderer shall become the property of the Council and on no account will they be returned to the Tenderer.

4. Acknowledgment by Tenderer

The Tenderer acknowledges that:

Review the list below, particularly Clause 3 (d). See User Guide for more information.

- (a) The Council makes no representations and offers no undertakings in issuing this Tender.
- (b) The Council is not bound to accept the lowest Tender or required to accept any Tender.
- (c) The Council may consider and may accept non-conforming Tenders if accompanied by a conforming Tender or if the non-conformity is merely technical.
- (d) Council may accept a single Tender to provide all services under the Contract or more than one tender to provide some of the services under this Contract. Any Tender accepted will relate to the collection of one or some of the waste types referred to in Section A – Information for Tenderers and Schedule C – Conditions of Contract will be amended to reflect the particular waste types the subject of the Contract.
- (e) The Council may require the Tenderer to supply further information and/or attend a conference or interview.
- (f) The Tender Submission cannot be withdrawn without the consent of the Council unless it is withdrawn in writing before the close of the Tender Period by placing the withdrawal in the Tender Box.
- (g) The Tender Evaluation Panel and the Council may undertake 'due diligence' checks, including, but not limited to, verifying references and/or referees, and undertaking company searches and credit checks.

- (h) The Council will not be responsible for any costs or expenses incurred by a Tenderer arising in any way from the preparation and submission of Tenders.
- (i) The Council accepts no responsibility for a Tenderer misunderstanding or failing to respond correctly to this Tender.
- (j) Where information is supplied in Tender documents regarding historical quantities and types of materials, numbers of households, expected population growth and/or contamination levels, this is offered on the basis that such information is believed by the Council to be complete and correct at the time of its compilation. Tenderers should note that this information may not be representative of the present or future material stream. Accordingly the Council accept no responsibility for the accuracy of this information or the assumptions that the Tenderers may make based on this information.

5. Acceptance of Tender

The successful Tenderer will be notified in writing of the acceptance of its Tender. Unsuccessful Tenderers will also be informed of the outcome of the Tender process.

6. Contract

The notification of the acceptance of Tender will create a contract between the Council and the successful Tenderer on the basis of the selected Tender and the terms and conditions, if any, of Council's letter(s) of acceptance.

The successful Tenderer will be required to execute two (2) copies of a Formal Instrument of Contract incorporating the terms of the Contract being Section C – Conditions of Contract, relevant parts of Section D – General Specification and Specific Specifications, relevant parts of the Tenderer's Tender Return Schedules and the Council letter of acceptance within fourteen (14) days of these documents being presented to the Tenderer for execution. See Section G – Formal Instrument of Contract.

If the Formal Instruments of Contract are not executed by the successful Tenderer and returned to the Council, together with any payment or security, within the fourteen (14) day period, the Council may:

- (a) treat that failure as a breach constituting a repudiation of the binding agreement created by the Council's acceptance of the successful Tenderer's Tender and accept that repudiation; and,
- (b) terminate the agreement; and,
- (c) recover any damages arising from the repudiation by the Tenderer.

7. Use of Subcontractors

Where a Tenderer proposes to provide any part of the Services using 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.

Failure to provide such information may result in the Tender being excluded from further consideration.

Subcontractors will be required to satisfy the terms and conditions of these Tender Documents and will be required as a condition of their acceptance by the Council to comply with all relevant conditions of the Contract.

Tenderers will be required to ensure that subcontractors satisfy the terms and conditions of the Tender Documents and to include all relevant conditions of the contract in subcontracts.

8. Probity of Tender Process

A Statutory Declaration is included in the Tender Return Schedules which addresses 'Collusive Tendering'. Such declaration must be made and returned as part of the Tender. The Council may also appoint a Probity Advisor and both the Council and Tenderers must comply with the reasonable requirements of any such Advisor and any Probity Plan prepared by such Advisor.

9. Provision of Information by Tenderers

9.1 Tender Return Schedules

Tenderers are required to complete the Tender Return Schedules and submit these as part of their Tender. They should also supply any information or documents specified at the conclusion of the Schedules. While such information may be used in evaluation of tenders, it will not necessarily form part of the Contract.

9.2 Conflict of Interest

Tenderers must inform the Council of any circumstances or relationships which may constitute a conflict or potential conflict of interest if the Tenderer is awarded the contract.

If any conflict or potential conflict exists the Tenderer should advise how it proposes to address this.

9.3 Information for Evaluation

Tenderers are required to submit all the documents or information specified with their Tenders.

Tenderers may submit additional information in support of their Tender as may be considered necessary for evaluation of any methods, systems, processes, personnel, plant or equipment they propose to use in the performance of the Contract. Without limiting the *Local Government Act 1993* and *Local Government (General) Regulation 2005* tendering requirements, the Council reserves the right to clarify with any Tenderer the contents of any information.

Tenderers must complete all relevant Tender Return Schedules in Section F to provide the Council with the information required to fully and fairly evaluate the Tender.

10. Timing of Tender

The proposed timing for the tendering process is as follows:

Call for tenders:	[Click here and type date]
Tender briefing:	[Click here and type date]
Close of tenders:	[Click here and type Closing Time and Closing Date]
Award of Contract (indicative):	[Click here and type date]

Services Commencement Date:	[Click here and type date] [Click here and type if date firm, to be agreed etc]
-----------------------------	--

11. Confidentiality

11.1 Control of Confidential Information

The Council and Tenderers must maintain effective systems to protect Confidential Information.

Neither may:

- (a) use Confidential Information for any purpose other than the performance of that person's obligations under the Contract or in the assessment of the Tender;
- (b) disclose (and must ensure that its employees do not disclose) Confidential Information to any third party, except in accordance with the procedure set out in this Clause
- (c) allow its employees access to Confidential Information without ensuring that those employees are aware of and comply with these systems for the protection of Confidential Information.

The Council or a Tenderer may disclose Confidential Information to a third party only where that entity has obtained the prior written approval of the other party to such disclosure. This approval must not be unreasonably withheld if the other party has procured a confidentiality undertaking in the same terms as this Clause in respect of the information from such third party.

12. Evaluation Criteria – Checklist for Tenderers

To consider Tenders, the Council will form a Tender Evaluation Panel, the panel will use a weighted point score evaluation system that allows price and non-price criteria to be taken into account in the selection of a preferred Tenderer.

Council reserves the right to short-list as many applicants as it deems desirable.

If a Tenderer proposes to provide any material part of the Services using a subcontractor, their Tender should detail substantial information about the proposed subcontractor and the proposed contractual arrangement between the Tenderer and that subcontractor.

Tenderers should ensure that their proposals address the following criteria.

These criteria will be used to assess the Tenderers proposals but are not necessarily in weighted order:

- details of current and previous relevant experience
- referees responses (if called for)
- staff resources (including supervisory staff)
- vehicles plant and equipment
- improvement and Innovation strategies
- Work, Health and Safety
- proposed methods of service delivery
- facilities
- other resources
- management skills
- current and future workload

- transition plan
- coverage of Tender requirements
- quality management and systems
- financial capacity
- tender prices
- environmental management and performance proposals
- evidence to support the principles of ecologically sustainable development proposals
- The Tenderer's proposal for the employment of existing workers providing the Services (or any of them) under existing arrangements/contracts and whether the terms and conditions of any such employment are comparable to those to be offered by the Tenderer
- [community Customer Service Experience and capacity](#)
- [education experience and capacity.](#)

Tenders will be assessed by the Tender Evaluation Panel which will make recommendations to the Council which may result in the awarding of a contract to a successful Tenderer or Tenderers.