



**CUMBERLAND
COUNCIL**

Request for Tender

Auburn Botanical Gardens Entry Revitalisation Project

RFT NO. T - 2019 - 019

Summary Information

Request for Tender (RFT) Reference No.	T – 2019 – 019
Project Name	Auburn Botanical Gardens Entry Revitalisation Project
Issue Date	11 June 2019
Briefing or Site Inspection	A mandatory pre-tender briefing will be held at “The Cottage” 1st Floor Works Depot Chiswick Road, AUBURN. 10am Thursday 20 June 2019.
Last date for submission of any Request For Information by Tenderers	25 June 2019
Closing Date and Time	2:00pm 2 July 2019
Post Tender Meeting	As notified by the Council
Preferred Tenderer announced	Open Tender
Date for Practical Completion	12 Weeks
Addressing Lodgement	Responses are to be submitted via electronic lodgement through the eTendering website at: https://tenders.nsw.gov.au/wsroc/
Nominated Contact Person/s	Bill So
	E-mail: tendering@cumberland.nsw.gov.au
Information Contained in RFT Package	This Request for Tender contains the following Sections:
	(1) Part A: Introduction
	(2) Part B: Conditions of Tendering, together with the following:
	(i) Attachment 1: Tender Offer Form
	(ii) Attachment 2: Tender Schedules
	(iii) Attachment 3: Conditions of Contract
	(iv) Attachment 4: Scope of Works
	(v) Attachment 5: Information Documents

Part A - Introduction

A1. INVITATION TO TENDER

This Invitation to Tender has two parts:

- (a) Part A - this introduction; and
- (b) Part B - Conditions of Tendering which includes Attachments 1 to 5.

A2. BACKGROUND TO THE PROJECT

Background Information

Cumberland Council is currently upgrading the entrance access facilities at the Auburn Botanical Gardens (ABG) Chisholm Rd & Chiswick Rd, Auburn.

Following the completion of the ABG Master Plan, it was identified that the entries to the gardens required redesigning to reflect their importance and improve the arrival experiences of the community to the gardens.

Council is calling for suitably qualified and experienced Contractors for the construction and landscaping of the new community access entry on Chisolm Road, Auburn, Lot 1 DP 938994 in accordance with the requirements of the Request for Tender Document RFT-2019-019.

The ABG has been listed on the Heritage Register as “local landscape of significance” and the timber pergola has been identified with high significance. The pergola structure is to be disassembled and restored with existing and new materials as part of this project.

Lump Sum

The work is awarded for the contract work on a lump sum fixed price basis in accordance with the fixed lump sum provisions in the tender pricing schedules herein. The applicable terms and conditions of engagement are detailed in Attachment 3 – Conditions of Contract

Final Paragraph

A more detailed brief of the extent of Services/Works required by Council is set out Attachment 4 – Scope of Works.

Part B - Conditions of Tendering

1. INTERPRETATION OF TENDER MATERIALS

- 1.1. Terms defined in the General Conditions of Contract/Major Services Contract/Minor Services Agreement (the Contract) have those meanings in the Tender Documents unless the context otherwise requires.
- 1.2. The Conditions of Tendering does not form part of the Contract.
- 1.3. The Tender Documents are:
 - (a) these conditions of tendering (Conditions of Tendering), the tender offer form (**Tender Offer Form**), and the tender schedules (**Tender Schedules**);
 - (b) the Formal Instrument of Agreement;
 - (c) the Contract including the schedules to the General Conditions of Contract set out in Attachment 3;
 - (d) the Specification/Scope of Work including attachments (if any) set out in Attachment 4; and
 - (e) all addenda (if any) to the Tender Documents issued to Tenderers by Council.
- 1.4. The Tenderer is the person who submits a Tender and who is identified in the Tender Offer Form.
- 1.5. The Information Documents are:
 - (a) the documents listed in Attachment 5;
 - (b) all information, data, test results, samples, reports or documents provided to the Tenderer by the Council, the Council's representative or the Council's servants, agents or consultants which are expressly stated to be "Information Documents" or which do not form part of the Tender Documents; and
 - (c) any other information, data or document which is referred to or incorporated by reference in the information, data or documents referred to in paragraph (a) above.
- 1.6. Boxed text in the Scope of Works identified as "NOTE TO TENDERERS" (if any) comprises either instructions to the Tenderer to amend the Scope of Works and/or the drawings, or instructions on the pricing of parts of the Works (which may be identified as options or alternatives). If the note contains instructions to amend the Scope of Works and/or the drawings, the Tenderer must prepare its tender based on those documents amended as instructed.

The Scope of Works and the drawings will be adjusted accordingly before the Contract is executed, and the note removed.

2. ENQUIRIES

- 2.1. Enquiries concerning the tender must be directed to the Nominated Contact Person specified in the Summary Information.
- 2.2. Tenderers' names will be made available on receipt of apparently bona fide enquiries from interested subcontractors and suppliers of material. Whether or not any enquiry received by a subcontractor or supplier is "bona fide" for the purposes of this clause B2.2 is a matter for the Council in its absolute discretion.

3. STATUS OF TENDERS

- 3.1. The Tenderer is invited to submit a Tender in accordance with these Conditions of Tendering.
- 3.2. The invitation to tender in clause B3.1 is an invitation to treat. It is not an offer capable of acceptance, nor should it be relied upon, construed or interpreted as such.
- 3.3. By submitting a tender, the Tenderer acknowledges that the submission of a tender does not create a contract between the Tenderer and the Council.
- 3.4. Without limiting any clause of the Conditions of Tendering:
 - (a) Tenderers acknowledge that no agreement has been formed between the Council and a Tenderer as a result of the tender process such that the Council is limited or constrained in the way in which it can deal with Tenderer's offer other than (if at all) as set out in these Conditions of Tendering; and,
 - (b) The Council will not be liable to any Tenderer for any loss or damage suffered by a Tenderer arising out of or in connection with any act or omission of the Council in respect of the invitation to tender in clause B3.1, the subject matter of this invitation to submit a tender, the Tender Documents, any tender, the evaluation of tenders, the termination of the tender process or the award of a contract for the Works/Services (whether to a Tenderer or someone else).

4. TENDER

- 4.1. A tender must be made by fully completing, dating and executing the Tender Offer Form and completing, signing and dating (where required) the numbered Tender Schedules, and attaching to the Tender Schedules all information required by those schedules. If an addendum has been issued, the completed 'acknowledgment of addendum' form (issued with the addendum) must be lodged with the tender.
- 4.2. The amount entered on the Tender Offer Form is for performing the Services/Works strictly in accordance with the requirements of the Tender Documents and is deemed to include all incidental and all contingent costs, expenses and profit.

5. LODGEMENT OF TENDER

- 5.1. Tenders must be lodged at the address below by the time and date specified in the **Summary Information**.
- 5.2. Tenders must be lodged by the Tenderer by Closing Time and submitted via <https://Tenders.nsw.gov.au/wsroc/> as a single ZIP file.
- 5.3. An electronic tender must be received in its entirety, and not merely dispatched, prior to the system being shut down. Electronic tenders not received in their entirety will not be considered by the Council.
- 5.4. Tenders delivered by any other means or to any other address will not be accepted.
- 5.5. A tender submission must contain the original tender, completed in accordance with clause B4.
- 5.6. All costs associated with the preparation and submission of the Tender shall be borne by the Tenderer.
- 5.7. If the Tenderer encounters technical difficulties during the lodgement process, then it may contact the following help desk:

NSW Procurement Service Centre Technical Help Desk: 1800 679 289

6. LATE LODGEMENT

- 6.1. A tender lodged after the Closing Time will not be accepted. The Council will notify the Tenderer promptly should its tender or tenders (as relevant) be received late.
- 6.2. Lodgement of tenders on time is entirely the Tenderer's responsibility.

7. NON-DISCLOSURE OF INFORMATION

- 7.1. The Tender Documents and any documents made available by the Council for the information of Tenderers (including the Information Documents) (**Confidential Information**) are confidential and are furnished to the Tenderer on that basis. The Tenderer must comply with the obligations set out in the Contract in dealing with all Confidential Information as if it was the Service Provider/Contractor referred to in that clause.
- 7.2. Except as required by law, the amount of each tender received will not be disclosed or otherwise made public by the Council.

8. CONFLICT OF INTEREST

- 8.1. Tenderers must notify the Council as soon as practical after becoming aware of an actual or potential Conflict of Interest at any time prior to receiving notification of the award of a contract or the termination of the tender process.
- 8.2. If the Tenderer has or may have an actual or potential Conflict of Interest, the Council may, at its discretion:
 - (a) exclude the tender from further consideration; or
 - (b) impose conditions on the Tenderer for the management of the actual or potential Conflict of Interest.
- 8.3. If the Tenderer is unable or unwilling to comply with the conditions imposed under clause B8.2 (b) or otherwise resolve the actual or potential Conflict of Interest in a manner satisfactory to the Council, the Council may, at its discretion, exclude the tender from further consideration.
- 8.4. For the purposes of this clause B8, the terms:
 - (a) "**Conflict of Interest**" means when the Tenderer could be seen to influence a council officer / staff member (employed on a permanent, casual or contractual basis) due to a Non-Pecuniary Interest or a Pecuniary Interest;
 - (b) "**Non-Pecuniary Interest**" means any private or personal interest the Tenderer or any of its employees may have with a council officer / staff member or councillor which does not relate to financial gain (e.g. kinship, friendship, membership in an association, society etc.), or involvement or interest in any activity; and
 - (c) "**Pecuniary Interest**" is a financial interest that a council officer / staff member or councillor or relatives, partners and associates has with a Tenderer because of a likelihood or expectation of financial gain or loss.

9. INFORMATION DOCUMENTS

- 9.1. The Tenderer:
 - (a) must not in any way rely upon:

- i. any Information Document or any other data, representation, statement or document made by or provided to Tenderers by the Council or anyone on behalf of the Council which will not form part of the eventual contract with the Council for the performance of the Services/Works; or
 - ii. the accuracy, adequacy, suitability or completeness of the Information Documents or any other such information, data, representation, statement or document;
- (b) must prepare and submit its tender based on its own investigations, interpretations, deductions, information and determinations; and
 - (c) acknowledges that the Council will be entering into the Contract relying upon the successful Tenderer fulfilling the obligations in paragraphs (a) and (b).

10. CONDITIONS FOR PARTICIPATION

- 10.1. The conditions for participation set out in this clause B10 (Conditions for Participation) are minimum standard threshold requirements that must be met for a tender in response to this invitation to tender to be accepted for evaluation.
- 10.2. Subject to clause B17.4, any tender that in the opinion of the Council does not meet a Condition for Participation may be excluded from evaluation.
- 10.3. The Conditions for Participation are as follows:
 - (a) the Tenderer must complete and lodge its tender in accordance with the requirements of the Council's Code of Conduct. Refer to:
<https://www.cumberland.nsw.gov.au/sites/default/files/2017-10/code-of-conduct.pdf>
 - (b) the Tenderer must comply with and observe the ethical principles in Council's Statement of Business Ethics which is available from Council's website:
<https://www.cumberland.nsw.gov.au/sites/default/files/2017-10/statement-of-business-ethics-1.pdf>
 - (c) the Tenderer must comply with the NSW Government *Code of Practice for Procurement (NSW Code)*, the *New South Wales Industrial Relations Guidelines: Building and Construction Procurement (NSW Guidelines)* and any amendments thereto to the extent that they are applicable. Refer to:
https://www.procurepoint.nsw.gov.au/system/files/documents/code_of_practice_for_procurement_2013_ir_guidelines_0.pdf; and
http://www.industrialrelations.nsw.gov.au/biz_res/oirwww/pdfs/NSW_IR_Guidelines_Building_and_Construction_Procurement.pdf;
- 10.4. Lodgement of a tender will itself be an acknowledgement and representation by the Tenderer that it is aware of the requirements of its obligations in respect of clause B10.3(a) to (c) and the Tenderer agrees to provide evidence of compliance and access to all relevant information to demonstrate its compliance, as may be required by Council.
- 10.5. If the Tenderer fails to comply with clause B10.3 (a) to (c), the failure may result in this or any subsequent tender being passed over without prejudice to any other rights of action or remedies available to the Council.

11. TENDER VALIDITY PERIOD

- 11.1. Tenders will remain valid for period of ninety (90) days from the expiration of the Closing Date.

12. SITE INSPECTION AND BRIEFING

- 12.1. A joint site inspection and briefing for Tenderers is mandatory and will be held at the place and time identified in the **Summary Information** or as otherwise nominated by the Council. The Tenderer must attend this site inspection and briefing. Should the Tenderer fail to attend, its tender may be returned.
- 12.2. The Tenderer acknowledges and agrees that there is an expectation by the Council that the Tenderer will have a thorough knowledge of the requirements of the Project based on the Tender Documents before attending the joint site inspection and briefing.

13. DISCREPANCIES, ERRORS AND OMISSIONS

- 13.1. The Tenderer must notify the Council in writing of any ambiguity, discrepancy, error omission in any of the Tender Documents. Upon receipt of any notice, the Council may, in its absolute discretion:
- (a) not respond to or answer, or otherwise decline to respond to or answer any such notice;
 - (b) respond to or answer any such notice by issuing:
 - i. addenda to all Tenderers under clause B14; or
 - ii. an Information Document to all Tenderers; or
- 13.2. respond only to the Tenderer who gave the notice.
- 13.3. The Council will not be bound by any verbal advice given or information furnished by any of its employees, officers or agents in respect of the Services/Works. Any interpretation of the Tender Documents will be valid only if made by a formal addendum to the Tender Documents issued by the Council in accordance with clause B14.

14. ADDENDA TO TENDER DOCUMENTS

- 14.1. Addenda may be issued by the Council to clarify or to amend the Tender Documents. Every addendum issued will upon issue form part of the Tender Documents. Receipt of each addendum must be acknowledged on the form issued with the addendum, and the completed form must be lodged with the tender. Failure to acknowledge the receipt of any addendum may render a tender non-conforming.

15. DATE FOR PRACTICAL COMPLETION

- 15.1. The Tenderer must allow in its tender for all that which is necessary to bring the Services/Works to Practical Completion on or before the Date for Practical Completion as identified in **Part A - Introduction** and **Annexure Part A** the Contract Conditions.

16. NO COLLUSION

- 16.1. The Tenderer must, for so long as its tender remains capable of acceptance:

- (a) not collude with, or communicate with any other Tenderer concerning its tender or the tender process;
- (b) in relation to its tender, behave ethically and in accordance with generally accepted standards of commercial behaviour; and
- (c) advise the Council in writing as soon as is practicable if it becomes aware that any of the information supplied by it, or any statement made by it, is or becomes incorrect, inaccurate or potentially misleading.

16.2. Without limiting any other clause in the Conditions of Tendering, or any right the Council may have pursuant to these Conditions of Tendering or otherwise, if the Tenderer does not comply with clause B16.1, the Council may immediately terminate the involvement of the Tenderer in the tender process.

17. TENDER EVALUATION

- 17.1. The object of the evaluation will be to determine which tender the Council considers offers best value to the Council. Tenders will be assessed based on whether the tender satisfies the Conditions of Participation in clause B10.3 and the Mandatory Criteria, on a Pass/Fail basis, set out below at clause B17.4. Tenders satisfying both the Conditions of Participation and the Mandatory Criteria will then be evaluated using the Weighted Qualitative Evaluation Criteria, which is also set out below at clause B17.5.
- 17.2. The Council reserves the right, at any stage of the Tender Process, to shortlist Tenderers based on an assessment against any or all of the evaluation criteria and Council may set aside Tenders that are clearly not competitive or have no reasonable prospect of exhibiting the best value for money in comparison with other Tenders received.

Compliance Criteria

- 17.3. Compliance Criteria will be assessed on a Pass/Fail basis. Council is to determine whether the criterion is satisfactorily met for a Pass score. Council may exclude a Tender from further consideration if Council determines that the Tender fails one or more of the Compliance Criteria.
- 17.4. The following Compliance Criteria will be used for this category in the evaluation of Tenders submissions received for this RFT:

Criteria Number	Compliance Criteria	Reference
1.	Statement of Conformance: The Tenderer demonstrates a satisfactory level of conformance with the requirements of the Tender Documents.	Schedule 2: Statement of Conformance
2.	Conflicts of Interest	Schedule 3: Conflict of Interest
3.	Tenderer's Workplace Relations Information and Undertaking	Schedule 4: Tenderer's Workplace Relations
4.	Current Insurance Policies	Schedule 5: Current Insurance Policies
5.	WHS Management System	Schedule 6: WHS

6.	Quality Management System	Schedule 7: Quality Management
7.	Environment Management System	Schedule 8: Environmental Management
8.	Heavy Vehicle National Law	Schedule 9: Heavy Vehicle National Law

Weighted Qualitative Evaluation Criteria:

- 17.5. It is essential that Respondents address each Weighted Qualitative Evaluation Criteria. Failure to provide the specified information may result in elimination from the evaluation process.

Criteria Number	Weighted Qualitative Evaluation Criteria	Reference
1.	Lump Sum Tender Price Breakdown: The Tenderer provides detailed and competitive pricing.	Schedule 10
2.	Capacity to Perform the Work: Demonstrates successful performance of work similar to the Works tendered for.	Schedule 12
3.	Capacity to Perform the Work: Demonstrates capability to perform the work similar to the Capacity to Perform the Work	Schedule 12
4.	Method of Construction and Proposed Programme – Detail of construction methodology and staging proposed by the tenderer.	Schedule 13
5.	Method of Construction and Proposed Programme – Project plan/program, such as Gantt Chart including hold points, milestone etc.	Schedule 13

- 17.6. Tenders must be executed in the manner indicated below:

- (a) In the case of a corporation: the tender must be executed under its common seal affixed in accordance with the Corporations Act 2001 (Cth) and the corporation's constitution or alternatively, by a director and secretary, or two directors in accordance with s127 of that Act.
- (b) In the case of an unincorporated joint venture or consortium (whether or not trading under a business or trade name): each member of the joint venture or consortium must execute the tender. Where that member is a corporation, execution must be under its common seal affixed in accordance with the Corporations Act 2001 (Cth) and the corporation's constitution or alternatively, by a director and secretary, or 2 directors in accordance with section 127 of that Act.
- (c) The Tender Schedules issued to the Tenderer as a part of the Tender Documents, must be completed in full, executed and dated by the Tenderer, as required and must accompany the Tender Offer Form. Failure to include, or to complete, any of the Tender Schedules may render the tender non-conforming. A Tender Schedule is deemed to be not completed in full if any document called for in that Tender Schedule is not provided with the tender submission.

- 17.7. Should the Tenderer's tender be successful, all or part of the information may be incorporated into the Contract as an obligation of, or restriction on, the Contractor.
- 17.8. All the Tender Schedules must be completed to furnish and contain all the required information.
- 17.9. Council may use the Tenderers response to a Tender Schedule for one criteria in the evaluation of any criteria.
- 17.10. Council may undertake due diligence of any Tender, but not necessarily all Tenders, including:
- (a) regarding the financial position and viability of the tender and any associated risks;
 - (b) referee checks; and
 - (c) such other matters as Council considers necessary.
- 17.11. Council may obtain information from other sources, including financial reporting agencies, for the purpose of clause B17.12.
- 17.12. Council may take into account any information obtained pursuant to clause B19 in evaluating or selecting a Tender.

18. VARIATION OF TENDER

- 18.1. Before the Council accepts any of the received Tenders, a person who has submitted a Tender may, subject to this clause 18, vary the Tender:
- (a) by providing the Council with further information by way of explanation or clarification, or
 - (b) by correcting a mistake or anomaly.
- 18.2. Such a variation may be made either:
- (a) at the request of the Council, or
 - (b) with the consent of the Council at the request of the Tenderer, but only if, in the circumstances, it appears reasonable to the Council to allow the Tenderer to provide the information or to correct the anomaly.
- 18.3. If a Tender is varied in accordance with this clause 18, the Council must notify in writing all other Tenderers who have lodged a Tender with the same or similar characteristics as the varied Tender, and provide them with the opportunity to vary their Tenders in a similar way.
- 18.4. If the Council considers that a Tenderer has made an unintentional error of form in its Tender, the Council may, at its sole discretion, permit the Tenderer to correct that error, but will not permit the Tenderer to submit new or different information that would materially alter the original Tender.

19. ALTERNATIVE TENDERS AND EXECUTION

- 19.1. Council may consider an alternative Tender submitted by a Tenderer that does not comply with the requirements of the RFT. The Council will not consider an alternative proposal unless the alternative proposal is:
- (a) submitted together with a Tender that addresses the requirements of the RFT;
 - (b) clearly identified as an alternative Tender;
 - (c) compliant with all essential requirements identified in the RFT;

(d) fully described by the Tenderer, including:

- i. the advantages, disadvantages, limitations and capability of the alternative proposal; and
- ii. the extent to which the adoption of the alternative proposal would impact upon the tender that addresses the requirements of the RFT including any financial impact, impact on the provision of the Works and any other consequences of the alternative proposal; and
- iii. contains sufficient and verifiable supporting information and data to enable a comparison of the alternative proposal against other Tenders.

19.2. Without limiting any clause of the Conditions of Tendering, the Council may, in its absolute discretion and without being under any obligation to do so:

- (a) reject or otherwise not consider;
- (b) evaluate or otherwise consider; or
- (c) accept, any alternative tender.

20. ACCEPTANCE OF TENDER

20.1. The Council is not bound to accept the lowest or any tender.

20.2. The Council will not be responsible for or pay for any costs, losses or expenses suffered or incurred by the Tenderer out of or in the connection with the preparation and submission of tenders.

20.3. A tender will not be deemed to have been accepted and no contract in respect of the Services/Works will arise between any Tenderer and the Council until the successful tenderer and the Council execute the Formal Instrument of Agreement.

21. DISCLOSURE OF TENDER AND CONTRACT INFORMATION

21.1. The Council will publish details of tenders and any contract awarded as a result of this tender process in accordance with the *Government Information (Public Access) Act 2009* (NSW) and Premier's Memorandum M2007-01.

22. TERMINATION OF TENDER PROCESS

22.1. The Council may terminate the tender process at any time.

22.2. The Council will notify all tenderers of the termination of the tender process.

22.3. The Council will not be liable to the Tenderer for any costs, losses, damages or expenses suffered or incurred by the Tenderer in preparing or submitting its tender or in respect of any discussions, enquiries or negotiations undertaken by the Tenderer after its tender is submitted, whether or not the tender process is terminated by the Council.

23. DISCRETION OF THE COUNCIL

23.1. The Council reserves the right at any time and on any grounds to:

- (a) amend the Tender Documents, the Scope of Works/Specification or the Services/Works;
- (b) readvertise for new tenders;

- (c) terminate at any time further participation in the process by any or all Tenderers;
- (d) amend or terminate the tender process;
- (e) extend the Closing Time for tenders;
- (f) alter the approach during any negotiations;
- (g) require additional information or clarification (including presentations) from any Tenderer and use or not use such information in the evaluation;
- (h) elect not to select any Tenderer as preferred Tenderer; or
- (i) withdraw the invitation to tender.

24. NON-CONFORMING TENDERS

24.1. Any tender may be regarded as non-conforming and excluded from further participation if:

- (a) the Tenderer is or becomes insolvent, bankrupt or subject to external administration;
- (b) the Tender is clearly incomplete or clearly non-competitive; or
- (c) the Tenderer makes a representation or warranty that is false or misleading.

25. PROBITY ADVISER

25.1. The Council may appoint a probity advisor to monitor the tender process. The probity adviser will be an observer of the tender process and will not be involved the detailed evaluation of any tenders.



CUMBERLAND
COUNCIL

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