



## **Section B Conditions of Tender**

### **Contract For Supply Of One used low hour Caterpillar 140 M Motor Grader Or Similar**

**TENDER NO:** 01-18-19

**CONTACT INFORMATION:**

Superintendent: David Ciosmac  
Telephone: **0407 304 662**  
Email: david.ciosmac@Tiwiislands.nt.gov.au

**TENDER CLOSING INFORMATION:**

Date: 9-NOV-2018  
Time: 2:00 pm

All tenders for this Contract must be lodged through the Tiwi Islands Regional Council electronic tender portal <https://www.tenderlink.com/tiwiislands/>



## **PART 1 - NATURE OF TENDER AND DOCUMENTS**

### **1. Tender Documents**

The Tender Documents comprise the following:

- a. Section A – Information for Tenderers;
- b. Section B – Conditions of Tender;
- c. Section C – Conditions of Contract;
- d. Section D – Specification;
- e. Section E – Tender Return Schedules;
- f. Section F– Formal Instrument of Contract;

### **2. Addenda**

- 2.1 Addenda may be issued prior to Closing Date. Each addendum will be issued to all prospective Tenderers whom Council knows have downloaded or purchased the Tender Documents and, upon issue, will form part of the contract documents.
- 2.2 Addenda shall not be issued within 5 business days prior to the Closing Date, unless Council determines that to do so is essential for the integrity of the tender process.
- 2.3 Council will not reply to questions posed by Tenderers within 5 business days prior to the Closing Date, unless Council determines that to do so is essential for the integrity of the tender process.
- 2.4 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.
- 2.5 Any of the Tender Documents may be amended to reflect the requirements of any Addenda.

### **3. Precedence of Addenda**

To the extent that there is any inconsistency between:

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



#### **4. Status of Tender Invitation**

This Invitation to Tender is not an offer. The submission of a tender does not create a contract between any Tenderer and Council.

## **PART 2 - CONTENT**

#### **5. Content of Tender**

- 5.1 The Tenders shall be submitted upon the Tender Forms provided. The Tender shall set forth the full given names, surname and address of the Tenderer (if a natural person) and when the Tender is in the name of a firm, the names in full and address of each member of the firm. When the Tender is by a Company there shall be set forth the name of the Company and the address of the Registered Office of the Company.
- 5.2 Each Tender shall contain an address for service of any notices necessary or required to be or which may be served on or given to the Tenderer in connection with his Tender and any subsequent contract arising out of acceptance of the Tender.
- 5.3 The Tender shall be accompanied by any other documents required by the Tender Documents to be submitted with the Tender, and failure to comply with this requirement may lead to rejection of the Tender.
- 5.4 The Tender shall be for the whole of the works, supplies or services (as the case may be) unless otherwise stated in the Tender Documents.
- 5.5 The Tenderer shall not alter or add to any Tender Document except as required by these Conditions of Tender.

#### **6. Documents to be Lodged with Tender**

The number of copies required, together with the titles of the documents to be lodged are as indicated below, and shall be completed and lodged as part the Tender.

	<b>TITLE</b>	<b>NO. REQUIRED</b>
Schedule 1	Tender Form – Formal Offer	1
Schedule 2	Tender Prices	1
Schedule 3	Warranty	1
Schedule 4	Statement of Conformity	1
Schedule 5	Collusive tendering – Statutory Declaration	1
Schedule 6	Financial Details	1
Schedule 7	Insurances	1
Schedule 8	Local Industry Participation	1
Schedule 9	Referees	1
Schedule 10	Proposed Date of Delivery	1
Schedule 11	Schedule of Maintenance and Servicing	1

#### **7. Execution of Tender**

Tenders must be executed in the following manner:



- 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.

## **PART 3 – WARRANTIES, ACKNOWLEDGMENTS AND OBLIGATIONS**

### **8. Tenderer's Warranties and Obligations**

- 8.1 These Conditions of Tender prescribe the rules for the conduct of the tender process. By submitting a Tender, a Tenderer agrees to comply with, and be bound by, the rules contained within these Conditions of Tender.
- 8.2 Except for any express statement contained in the Request for Tender Documents, the Tenderer warrants that in lodging its Tender it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of the Council, its officers, employees, agents or advisers.
- 8.3 Prior to submitting a Tender, a Tenderer must have:
  - a. Examined all written documentation made available by the Council to the Tenderers for the purpose of tendering;
  - b. Become acquainted with the nature and extent of the contract and the documents to be supplied and made all necessary examinations, investigations, inspections and deductions;
  - c. Examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries;
  - d. Satisfied itself that it has sufficient and complete information to prepare its Tender;
  - e. Familiarised itself with all regulatory requirements relating to the supply of the equipment and the elements necessary to the supply of the grader. This includes the extent, if any, of any GST payable for the supply of any goods and services pursuant to the contract;
- 8.4 This Tender Document has been collated by mechanical means. Tenderers should check the Tender Documents to ensure that it includes all pages, which are numbered consecutively in each section.

### **9. Acknowledgment by Tenderer**

The Tenderer acknowledges that:



- a. Council is not bound to accept the lowest Tender or required to accept any Tender;
- b. The Council may consider and may accept non-conforming Tenders;
- c. Council may require the Tenderer to supply further information and/or attend a conference or interview;
- d. The Tender cannot be withdrawn without the consent of Council unless it is withdrawn in writing before the close of the Tender Period by notifying the tender Superintendent;
- e. 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;
- f. 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;
- g. The Council accepts no responsibility for a Tenderer misunderstanding or failing to respond correctly to this tender; and
- h. Where Council has provided information in the Tender Documents to assist Tenders, Council believes that information to be accurate but does not warrant it to be so or suggest that it is representative of the present or future conditions.

## **10. Discrepancies, Errors and Omissions in Tender Documents**

- 10.1 Should the Tenderer find any discrepancy, error or omission in the Tender Documents he shall notify the Superintendent in writing thereof on or before the closing date for the tenders.
- 10.2 If any discrepancy, error or omission in the Tender Document is found by the Superintendent, appropriate notification to Tenderers will be made accordingly.
- 10.3 Any clarification given pursuant to this clause may also be issued to all other prospective Tenderers.

## **11. Use of Subcontractors**

Where a Tenderer proposes to subcontract any part of the services, information relating to the subcontract must be detailed in the Tender, together with information on the relevant experience of each proposed subcontractor, and details of the work proposed to be undertaken shall be set out in Form 3 of this Tender Document.

## **12. Probity of Tender Process**

The Statutory Declaration included in the Tender Return Schedules which addresses collusive tendering must be made and returned as part of the Tender. Council may also appoint a probity adviser. Both Council and Tenderers must comply with the reasonable requirements of any such adviser and any probity plan prepared by such adviser.



**13. 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.

**14. Information for Evaluation**

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. The Council reserves the right to clarify with any Tenderer the contents of any information.

**15. Tenderer Not to Solicit the Council and its Employees**

The Tenderer and its representatives must not attempt to interview or to discuss this Tender with the Mayor, Councillors, or employees of Council, other than the Superintendent.

**16. Local Suppliers**

- 16.1 The Council supports development of local industry within the principle of value for money and, where appropriate, Tenderers should highlight the commercial, technical and economic benefits of the local content contained in their Tender.

**17. Control of Confidential Information**

Neither Council nor the Tenderer may:

- a. Without the written consent of the other, 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; and
- c. Allow its employees access to Confidential Information without ensuring that those employees are aware of Confidentiality requirements.



## **18. Release of Tender Details**

- 18.1 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.
- 18.2 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; or
  - f. Necessary for the evaluation of the Tenders.
- 18.3 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 Council's Tender and Purchasing Policies.

## **PART 4 – BRIEFING AND ENQUIRIES**

### **19. Briefing**

- 19.1 If a Briefing is indicated on the cover sheet of this Request for Tender Document, attendance at the Briefing by the Tenderer or a competent representative of the Tenderer is a condition precedent to the submission of a Tender.
- 19.2 In the event that a Tenderer or a competent representative does not attend the Briefing, the Council (in its absolute discretion) will make a determination whether that party will be permitted to submit a Tender.

### **20. Meeting**

- 20.1 A meeting of any prospective tenderers may be organised prior to the tender lodgement date by the Superintendent.
- 20.2 Tenderers will be advised in writing about any such meeting.

### **21. Clarification**

- 21.1 Tenderers may seek clarification of any matters relating to this Request for Tender by directing enquiries to the Superintendent nominated on the cover sheet of this Request for Tender Document.



- 21.2 No statement made by the Superintendent or any other representative of Council should be construed as modifying these Conditions of Tender or any other Tender Documents unless confirmed in writing by the Superintendent.

## **PART 5 - SUBMISSION**

### **22. Tender Validity Period**

- 22.1 Each Tender shall be an irrevocable offer by the Tenderer to supply the equipment in the terms in the Conditions of Contract and each of the completed Tender Schedules, which offer remains open for acceptance by Council for a period agreed from the Closing Date.
- 22.2 If a Tender is not formal, or complete in accordance with these Conditions of Tender, the Tender validity period shall commence from the date on which the Tender is formalised or completed, to the satisfaction of the Superintendent.
- 22.3 A Tenderer may withdraw his Tender at any time after the expiration of the Tender validity period but shall not withdraw his Tender prior to the expiration period, unless such withdrawal is accepted by the Superintendent.

### **23. Conforming Tenders**

To submit a conforming Tender, the Tenderer must comply with all of the requirements contained in the Tender Documents.

### **24. Non-conforming or Informal Tenders**

- 24.1 A tender is a non-conforming or informal tender if it:
- a. is lodged after the Closing Date;
  - b. contains provisions not required or allowed by the Tender Documents .
- 24.2 Where a non-conforming or informal tender is submitted, the following applies:
- a. A non-conforming or informal tender may be excluded from consideration;
  - b. Council may at its sole discretion consider a non-conforming Tender; and
  - c. Communication by Council on a Tender does not imply that the Tender is a complying Tender.

### **25. Tender Lodgement**

- 25.1 All Tenders for this contract must be lodged by the Tender Closing Time:
- a. All tenders for this Contract must be lodged through the Tiwi Islands Regional Council electronic tender portal <https://www.tenderlink.com/tiwiislands/>





- b. Deposited in the Tender Box located at:

**Tiwi Islands Regional Council  
Building 4, 116-120 Coonawarra Rd  
Winnellie NT 0822**

Tenders must be labelled: Grader Tender T01-18-19

- 25.2 DO NOT leave your submission to the last minute. As a guide, you should begin your file transfer at least 1 hour prior to the closing time.

**26. Opening of Tenders**

Tenders received will be opened by Council as soon as practicable after the Tender Closing Time.

**27. Extension of Time**

The Council, at its absolute discretion, may extend the Tender Closing Time for the submission of Tenders.

**28. Alternative Proposals**

Council is open to considering alternative proposals, but which are innovative and which, for example, include cost saving efficiencies or environmental advantages. Council reserves the right to negotiate with any person making an alternative proposal.

**29. Ownership of Tenders and Tender Information**

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

**PART 6 - ASSESSMENT**

**30. Evaluation Criteria – Checklist for Tenderers**

- 30.1 To consider Tenders, the Council will form a Tender Evaluation Panel which will make recommendations to the Council which may result in the awarding of a contract to a successful Tenderer.

- 30.2 These criteria will be used to assess the Tenderers proposals but are not necessarily in weighted order and may not be given equal weight:

- a. Completeness (basic contractual/commercial compliance);
- b. Compliance with the Tender Documents;
- c. Conformity with specified requirements;
- d. Value for money for Council;
- e. Local industry participation;



- f. Compliance with timeframes;
- g. Quality of product/service;
- h. Tenderer's technical, financial and managerial capacity, including methodology for delivery the equipment;
- i. Tenderer's previous experience;
- j. Tenderer's past performance under contract including, but not limited to:
  - i. Compliance within time frames;
  - ii. Quality of product/service;
  - iii. Contractual relations/administration; and
  - iv. Compliance with sub-contractor/supplier provisions.
- k. Tender prices;
- l. Tenderer's current commitments, capacity to deliver and availability of suitable resources and staffs;
- m. Warranty and performance guarantees;
- n. Operational management systems;
- o. Referees' responses (if called for); and

30.3 Each of the selection criteria may not be given equal weight. The objective of the assessment is to select the tender most advantageous to the Council.

## **PART 7 – ACCEPTANCE AND CONTRACT**

### **31. Acceptance of Tender**

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

### **32. Contract Execution**

32.1 The successful Tenderer will be required to execute two (2) copies of a Formal Instrument of Contract incorporating the terms of the Contract.

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



- a. Treat that failure as a breach constituting a repudiation of the agreement created by the Council's acceptance of the successful Tenderer's Tender, and accept that repudiation; and,
- b. Terminate the agreement; and
- c. Sue for damages arising from the repudiation by the Tenderer.

### **33. Definitions**

In these Conditions of Tender capitalised terms have the meaning attributed to them in Conditions of Contract, and section 3 - the following terms shall have these meanings:

**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 on the cover page of these Conditions of Tender 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 on the cover page of these Conditions of Tender or such later time as may be notified in writing to the Tenderer by the Council.