

Richardson Park

Request for Proposals

Appendix D – General Terms and Conditions

1.1 Invitation to treat

The Request for Proposals is not an offer but is an invitation to Proponents to make offers to the Territory.

The Request for Proposals and any communications made or documents issued by or on behalf of the Territory in any way connected with the Request for Proposals and the RFP Process shall not be construed, interpreted or relied upon, whether expressly or implied, as an offer capable of acceptance by any person, or as the acceptance of an offer by the Territory, or as creating any form of contractual (including a process contract), quasi-contractual, restitutionary, promissory estoppel rights, or rights based on similar legal or equitable grounds, whether in respect of the RFP, the conduct of the RFP Process or otherwise.

1.2 No legal relationship

By lodging a Proposal, the Proponent acknowledges that:

- (a) no contract exists or will arise between the Territory and any person in respect of the Request for Proposals by reason of its Proposal or any stage of the RFP Process unless and until the final written contract and any other required legal documentation are executed between the Territory and that Proponent;
- (b) the rights, powers and discretions given to the Territory in the Request for Proposals are not pursuant to any contract between the Territory and the Proponent, but rather are rights, powers and discretions which the Territory has as part of the RFP Process;
- (c) despite section 1.2(a) of this Appendix D, by lodging a Proposal, the Proponent is bound by the terms of the Request for Proposals and its Proposal; and
- (d) the Territory has no contractual or other legal obligation to the Proponent arising out of the Request for Proposals with respect to the consideration, the assessment, the acceptance or the rejection of any Proposal or the failure to consider, assess or accept any Proposal.

1.3 Validity Period

Proponents must ensure that they keep their Proposal open for acceptance by the Territory for a period of not less than 90 days after the Closing Date (**Validity Period**).

Proponents may withdraw their Proposal at any time after the expiration of the Validity Period, but not during the Validity Period unless such withdrawal is with the prior written approval of the Territory.

Where the Territory seeks an extension of the Validity Period a request in writing will be forwarded to Proponents. Proponents must respond in writing to the Territory's request for an extension to the Validity Period within the timeframe stated in the Territory's request. Failure to respond within the stated timeframe may result in a Proponent's Proposal not being considered further.

1.4 Amendments to the Request for Proposals and Addenda

The Territory may at any time, in its absolute discretion, add to, vary or otherwise alter all or any aspect of the Request for Proposals, the RFP Process or any Information made available.

No addition, variation or alteration to the Request for Proposals shall be recognised unless in the form of an addendum issued by the Territory. Any addendums issued under this section will become part of the RFP.

1.5 Inconsistencies

Should a Proponent find or reasonably believe it has found any discrepancy, error, ambiguity, inconsistency or omission in the Request for Proposals or any Information given or made available by the Territory, that Proponent should notify the Project Manager in writing, setting forth in sufficient detail such discrepancy, error, ambiguity, inconsistency or omission as early as possible and prior to the Closing Date so that the Territory may take whatever corrective action, if any, it deems appropriate.

1.6 Notices to Proponents

The Territory may deliver any written notification to a Proponent by leaving it or causing it to be left at Proponent's specified address for service in their Proposal.

1.7 Further information and clarification

Requests for clarification or further information in relation to the Request for Proposals should be made in writing to the Project Manager by 2pm ACST on 10 May 2016.

Other than in relation to concerns about the RFP Process, the only point of contact for all matters relating to the Request for Proposals and the RFP Process is the Project Manager. Concerns in relation to the RFP Process should be raised with the Probity Advisor (see the Request for Proposals for further details of the Probity Advisor).

Proponents, their respective directors, officers, employees, agents, consultants and advisors must not, under any circumstances, make any enquiries of, or hold any discussions with, or enter into any arrangements (whether written or otherwise and whether exclusive or non-exclusive) with:

- (a) any representatives, directors, employees, officers, financiers, customers, suppliers, lessees or consultants of the Territory;
- (b) Territory Ministers or politicians or their respective staff;

- (c) Territory or Commonwealth Government agencies (other than searches of public records and making contact or applying for any authorisation required by a Proposal in order that the Proponent may be in a position to deliver a Proposal); or
- (d) the media or consultants to the Territory,

in connection with the RFP, except as provided for in the Request for Proposals or with the prior written consent of the Territory (such approval may be given or withheld, or given subject to conditions, at the discretion of the Territory).

The Territory will determine in its absolute discretion what, if any, response should be given to a Proponent's request. The Territory shall not be obliged to comply with any such request and does not accept any liability or responsibility for failure to provide any such information. If the Territory responds to a request, the Territory will do so in writing.

No requests for clarification or further information will be answered over the telephone.

Any clarification provided may be issued to all Proponents by an addendum without disclosing the source of the request.

Proponents should expect that requests requiring the provision of additional substantive information will be provided to all other Proponents by issue of an addendum.

Where a Proponent considers that a clarification question is not of a general nature, but relates to proprietary aspects of a Proponent's Proposal, the Proponent may identify that question as such. If in the opinion of the Project Manager the question is not proprietary, the Project Manager will advise the relevant Proponent, who then has the option to withdraw the question. If the Proponent continues to request a response to that question, then as with all questions of a general nature, the question and the response may be circulated to all Proponents. If the Project Manager agrees with the Proponent that a question relates to proprietary aspects of the Proponent's Proposal, the response will not be circulated to other Proponents.

1.8 Not exhaustive

None of the Information provided by the Territory is intended to be exhaustive. Proponents are required to make their own enquiries and independent assessments of the Request for Proposals and its requirements. The Information is provided on the basis that it is not binding upon the Territory and the Territory accepts no responsibility for any interpretation placed by a Proponent on the Information provided by the Territory.

1.9 Proponents to inform themselves

Proponents are responsible for:

- (a) examining and understanding the Request for Proposals and any Information made available by the Territory;
- (b) obtaining, examining and understanding all information that is obtainable by the making of inquiries that are relevant to the risk, contingencies and other circumstances having an effect on their Proposals;

- (c) obtaining their own independent expert advice (as required);
- (d) making their own judgments as to the Site and the opportunity and risks presented by the Site;
- (e) satisfying themselves as to the accuracy and completeness of their Proposals, including costings; and
- (f) satisfying themselves as to the requirements of the Request for Proposals and their ability to comply.

1.10 Release

The Proponent unconditionally and irrevocably releases the Territory, statutory authorities and any agencies and their respective Ministers, officers, employees, consultants, contractors and agents from all liability for any loss, cost or expense of any kind suffered or which may be suffered by the Proponent arising directly or indirectly from any error, ambiguity, discrepancy, inconsistency or omission in the Request for Proposals (including addenda) or in the Information.

1.11 Costs

Under no circumstances will the Territory reimburse or have liability for any charges, costs, expenses or fees that may be incurred by a Proponent in preparing or submitting a Proposal. Participation in the RFP Process is the sole responsibility of, and at the sole risk and expense of, the Proponent.

Irrespective of its determination and in no circumstance will the Territory be liable for any losses, damages, costs or expenses which may be incurred by a Proponent in seeking to secure the opportunity presented by this RFP.

1.12 Change in Proposal or composition of consortium

With the prior written consent of the Territory, a Proponent may at any time alter the identity or composition of the members of their consortium. The provision of consent is at the absolute discretion of the Territory. Such consent, if given, shall be on such conditions as the Territory may impose.

Each Proponent must inform the Project Manager promptly in writing of any material change to any of the information contained in the Proposal, and of any material change in circumstance that may affect the truth, completeness or accuracy of any information provided in, or in connection with, the Proposal.

1.13 Own investigations

Independent investigation may be undertaken by the Territory to verify the accuracy of statements made or to clarify information in each Proposal. Proponents must advise the Project Manager promptly of any perceived errors, ambiguities or discrepancies in their Proposal.

1.14 Additional information and clarification from Proponents

The Territory reserves the right to seek additional information from Proponents at its discretion.

If any information requested under the Request for Proposals has not been provided in a Proposal, the Territory may, in its absolute discretion:

- (a) decide not to request the additional information and exclude the Proposal from further consideration;
- (b) decide not to request the additional information and assess the Proposal “as is”, in the form submitted; or
- (c) request the additional information.

The Territory may at any time, in its absolute discretion, seek clarification of any Proposal through written request, presentation from the Proponent or by an interview or any other form of communication with a Proponent.

The Territory reserves the right to re-assess a Proposal following the receipt of the information provided in response to a request for clarification from the Territory.

1.15 Reliance on Proponent's information

By submitting a Proposal, the Proponent:

- (a) warrants and undertakes to the Territory that the information contained in its Proposal is true, accurate and complete as at the date on which it is lodged, and may be relied upon by the Territory in its selection of the preferred Proponent; and
- (b) acknowledges that the Territory will rely on the above warranty and undertaking when assessing the Proposal.

1.16 No Warranty as to the use of the Site

The Territory gives no warranty whatsoever that any part of the Site shall be or is suitable for the construction of any infrastructure or any undertaking of any development whatsoever and the Proponent shall rely solely on its own opinion as to the suitability of the Site for the development proposed.

1.17 Ethical Dealing

Proposals which, in the opinion of the Territory, have been compiled with the improper assistance of current or former officers, employees, contractors, consultants, agents or advisors of the Territory or with the utilisation of information obtained improperly or through the breach of an obligation of confidentiality may be declared ineligible for further consideration.

Proponents and their officers, employees, contractors, consultants, agents and advisers must not:

- (a) engage in misleading or deceptive conduct in relation to their Proposals or the RFP Process;

- (b) engage in any collusive activity, anti-competitive conduct, or any other unlawful or unethical conduct with (or in relation to) any other Proponent, or any other person in relation to the preparation of their Proposal or the RFP Process;
- (c) violate any applicable laws or Territory policies regarding the offering of inducements in connection with the preparation of their Proposals or the RFP Process; or
- (d) otherwise act in an unethical or improper manner or contrary to any law.

The Territory may, in its sole and absolute discretion, immediately declare a Proposal ineligible for further consideration where the Proponent lodging that Proposal has engaged in activity contrary to this section.

1.18 Conflict of Interests

Proponents and their respective officers, employees, contractors, consultants, agents and advisers should not place themselves in a position that may, or does, give rise to a Conflict of Interest during the RFP Process.

If at any time during the RFP Process, a Proponent is aware that an actual, potential or perceived Conflict of Interest exists or may arise, that Proponent should immediately notify the Project Manager.

If a Conflict of Interest arises during the RFP Process, the Territory may in its sole and absolute discretion:

- (a) declare a Proposal ineligible for further consideration;
- (b) enter into discussions to seek to resolve the Conflict of Interest; and/or
- (c) take any other action it considers appropriate.

1.19 Public statements

Except with the prior approval of the Territory, Proponents must not make a statement, issue any document or material or provide any other information for publication in any media, concerning this Request for Proposals, the Proposal assessment, the acceptance of any Proposal, commencement of negotiations or notification that a Proponent is a preferred Proponent.

The Territory may, in its sole and absolute discretion, declare a Proposal ineligible for further consideration if the Proponent lodging that Proposal does not comply with this requirement.

1.20 Confidentiality and proprietary information

This Request for Proposals is subject to copyright vested in the Territory. A Proponent may copy, save electronically, or otherwise reproduce this Request for Proposals for the purposes of preparing and submitting its Proposal.

A Proposal becomes the property of the Territory upon submission, and will not be returned to the Proponent. The Territory will hold each Proposal in confidence so far as the law permits.

Any personal information collected as part of the RFP Process will be handled in accordance with the Information Act.

By lodging a Proposal, a Proponent licenses the Territory to reproduce the whole or any portion of the Proposal for the purposes of the conduct of the RFP Process, Proposal assessment and clarification, resultant negotiations, preparation and management (if applicable), and anything else in relation to these purposes.

Nothing in this Request for Proposals changes or affects the ownership of copyright or other intellectual property rights that may subsist in the Proposal.

1.21 Termination of RFP Process

At any time during the RFP Process, the Territory may for any reason terminate the RFP Process. Such termination does not preclude the Territory from seeking to separately advance the development of the Site with one or more Proponents, or any other person or entity. Proponents shall not have any recourse whatsoever against the Territory including claims for any costs or expenses incurred up to and including the date that the RFP Process or the negotiations are terminated.

If the Territory considers that communications or dealings with any Proponent are proving or are likely to prove fruitless, or if the Territory simply declares for whatever reason to discontinue dealings with that Proponent, the Territory may so discontinue and that Proponent shall have no recourse whatsoever against the Territory.

1.22 Other rights

Without limiting its other rights, the Territory reserves the right, in its absolute discretion, at any time during the RFP Process to:

- (a) exercise any power, right or discretion contained in this Request for Proposals;
- (b) repeat any aspect of the RFP Process;
- (c) accept or reject any or all submitted Proposals at any time and/or for any reason;
- (d) assess or refuse to assess a Proposal;
- (e) change, delete from or add to, the Assessment Criteria or change any weightings or importance to be given to each Assessment Criterion or otherwise change the basis upon which Proposals are assessed or accepted;
- (f) advertise for new proposals for the development of the Site;
- (g) change any timetable or sequence for the RFP Process (including any or all of the matters in the indicative timetable in the Request for Proposals);
- (h) seek best and final offers from any person;

- (i) adopt different procedures for, and methods of, assessment, negotiation, discussion or engagement with each Proponent;
- (j) terminate the Proponent's participation in the RFP Process;
- (k) withdraw, suspend, cancel or modify this Request for Proposals or the RFP Process;
- (l) capture and transcribe the proceedings of any briefing session with one or more Proponents and circulate that material as it thinks fit;
- (m) publish the names of any Proponents, the preferred Proponent or the successful Proponent;
- (n) provide at any stage of the RFP Process, differing or selective levels of information in relation to the Site to Proponents and/or restrict specified parties from accessing certain data;
- (o) determine at any stage of the RFP Process what information is made available to what Proponents and at what times;
- (p) provide details of a Proponent's submission to the Territory's relevant politicians, officers, agencies and advisors;
- (q) accept a Proposal which does not comply with the requirements of this RFP;
- (r) accept or reject any Proposal at any time irrespective of the extent to which it satisfies any of the Assessment Criteria;
- (s) assess Proposals based on criteria in addition to the Assessment Criteria;
- (t) take into account any information from its own and other sources in assessing any Proposal;
- (u) not provide Proponents with any reasons for any actions or decisions it may take, including in respect of the exercise by the Territory of any or all of the abovementioned rights in relation to assessment of Proposals or final selections; and/or
- (v) take such other action as it considers, in its absolute discretion, appropriate or necessary in relation to the RFP Process.

1.23 Compliance with requirements of Request for Proposals

For a Proposal to be considered by the Territory, the Proponent should ensure that its Proposal is compliant with all the requirements set out in the instructions in this Request for Proposals, even where Proponents disagree with any of such requirements. Such disagreement should be specifically identified by a Proponent with an explanation as to why they disagree. The Proponent is also required to submit a completed Lodgement Checklist at the front of their Proposal and address the Assessment Criteria.

Failure to provide the information in accordance with this Request for Proposals may lead to the Territory rejecting the Proponent's Proposal.

1.24 Bound by General Terms and Conditions

Proponents should carefully review the General Terms and Conditions applicable to the Request for Proposals.

A Proponent, in submitting a Proposal, acknowledges that it accepts and is bound by all terms and conditions contained in this RFP.

1.25 Disclaimer

The Territory has prepared this Request for Proposals to provide information on the Site to Proponents who are participating in a competitive bidding process for the right to develop and own/lease the Site.

The Proponent, by lodging a Proposal, will be deemed to acknowledge and accept that in respect of the Information:

- (a) while the Territory has taken care in the preparation of the Information and believes it to be accurate, none of the Territory, its departments and any of their respective directors, officers, employees, advisors, contractors or agents (each a **Territory Participant**), gives any warranty or makes any representations, expressed or implied, as to the relevance, currency, reliability, completeness or accuracy of the Information;
- (b) none of the Territory Participants accept any responsibility or liability (except a liability that cannot lawfully be excluded) for any reliance placed on any of the Information;
- (c) to the maximum extent permitted by law, the Territory Participants disclaim and exclude all liability for any loss, claim, demand, damages, costs and expenses of whatsoever nature (whether or not foreseeable):
 - (i) suffered or incurred by any person relying or acting on the Information or any other written or oral information provided by any of them in connection with this Request for Proposals during the RFP Process; or
 - (ii) arising as a result of or in connection with the Information being inaccurate or incomplete in any way or by reason of any reliance thereon by any person, including by reason of any negligence, default or lack of care;
- (d) it is aware that there may be other documents and information which the Territory, its respective officers, employees, consultants, contractors and agents are aware of and which may be relevant to the RFP, but which have not been provided or to which no reference has been made in, or in connection with, this Request for Proposals during the RFP Process;
- (e) it has made its own independent evaluation of the suitability of the Information for the purpose of submitting its Proposal prior to using the Information; and

- (f) all Proposals are made and submitted entirely at the Proponent's own risk and expense and without recourse to the Territory, the Territory Participants and their respective officers, employees, consultants, contractors and agents for any loss, costs, expenses or compensation whatsoever.

Proponents must carefully and thoroughly consider and check the Information before submitting their Proposal because the Territory, the Territory Participants and all of their respective officers, employees, consultants, contractors and agents shall not be liable for any error, ambiguity, discrepancy, inconsistency or omission therein.