

PART B: CONDITIONS OF REQUEST

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1. REQUEST CONDITIONS

The Conditions of Request in Part B of this Request contain important provisions regarding the nature of this Request and the consequences of the Respondent making a Submission. The Respondent is deemed to have read and considered the Conditions of Request, as well as all other documents which comprise this Request, prior to making a Submission.

2. NATURE OF REQUEST

This Request is not an offer. It is a formal request for Respondents to make a Submission for the supply of services in response to WAPHA's Request. Nothing in this Request is to be construed as creating any binding obligations (whether legal or equitable) on WAPHA either as a process contract for this Request or as an Agreement for the supply of services between WAPHA and any Respondent.

Until such time as an Agreement has been executed, WAPHA shall not be bound by any obligations in relation to this Request.

3. INTERPRETATION

3.1 Definitions

"Agreement" means a contractual arrangement entered between WAPHA and the Respondent; the proposed form of Agreement is included as part of this Request.

"Business Day" means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia.

"Closing Time" means the time and date shown on the website for the specific Request;

"Conditions of Request" means this document and any other conditions communicated to Respondents via any means which are stated as being incorporated in a Request.

"Contact" means the email address tenders@wapha.org.au ;

"GST" means any tax imposed under any GST Law and includes GST within the meaning of the GST Act.

"GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended.

"GST Law" means the GST law as defined in the GST Act and includes any Act of the Parliament of Australia that imposes or deals with GST.

"PHN" means Primary Health Network;

"Request" all attachments and related documents loaded on the website, as well as any addenda and clarifications issued prior to the Closing Time which are supplied to Respondents via the Website or via email;

"Respondent" means a person, company or organisation who have downloaded this Request and whom lodges a Submission in response to this Request;

"Submission" means the documents and information submitted by a Respondent in response to this Request;

"Validity Period" means the time period during which the Submission is open for acceptance in accordance with clause 5.4 of this Request.

"Value for Money" has the meaning given to that phrase in clause 9.3 of this Request.

"WAPHA" means the Western Australian Primary Health Alliance Limited.

3.2 Interpretation

In this Request, unless inconsistent with the context:

- a) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- b) the singular includes the plural and vice versa;
- c) a reference to a gender includes any gender;
- d) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this document;
- e) the word includes is not a word of limitation and does not restrict the interpretation of a word or phrase in this agreement;
- f) a reference to a document, includes a variation or replacement of it;
- g) a reference to a statute includes its subordinate legislation and a modification or re-enactment of either;
- h) a reference to person, includes a reference to:
 - i) an individual, a body corporate, a trust, a partnership, a joint venture an unincorporated body or other entity, whether or not it is a separate legal entity;
 - ii) if the person is an individual, the person's personal representatives and assigns;
 - iii) if the person is not an individual, the person's successors and assigns; and
 - iv) a person, who novates this agreement;
- i) a reference to a thing is a reference to either the whole thing or a part of the thing;
- j) an agreement, representation or warranty in favour of or on the part of two or more people, benefits or binds them jointly and severally;
- k) a reference to currency is to the Australian currency;
- l) a reference to time is to Perth, Western Australia time;
- m) if the date on which a thing must be done is not a Business Day, then that thing must be done on the next Business Day;
- n) a reference to a day is a reference to the period, which starts at midnight and ends 24 hours later; and
- o) if a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event.

4. COMMUNICATION AND QUERIES

4.1 Contact with WAPHA

A Respondent must not make any contact with any person within WAPHA other than the Contact Person in relation to this Request, until the Respondent has:

- a) executed an Agreement with WAPHA;
- b) been advised that it has not been successful; or
- c) has been advised that the Request process has been cancelled.

4.2 Queries and clarifications during the Request process

Respondents may seek clarification of any matters relating to this Request up until three (3) Business Days before the Closing Time by directing enquiries to tenders@wapha.org.au. WAPHA will either provide a response or provide a response that no clarification or further information will be given.

At the discretion of WAPHA the Respondent may be directed to submit its query in writing, via the tenders@wapha.org.au email address or any other means the Contact Person may choose, and the response may be distributed to all Respondents at the discretion of the Contact Person.

Any additional information or clarification that, in the opinion of the Contact Person, would give a Respondent a material advantage in making a Submission shall be distributed to all Respondents.

If any Respondent locates any error or omission in the Request, the Respondent must seek clarification from the Contact Person.

5. SUBMISSIONS

5.1 Format

Respondents shall complete the Submission Form and Non-Conformance Schedule (if required) in their entirety and the declaration shall be signed by a suitably authorised person. Failure to provide this information may render a Submission non-conforming and WAPHA may exercise its rights under this Request, including not considering the Submission.

All Submissions and correspondence shall be in the English language.

Document formats included with a Submission must be of the following file types only:

- .doc; .pdf; .ppt; .xls; and
- where applicable shall be capable of being accessed by Windows Office 365.

Submissions and all related attachments are to be emailed in a **single zip folder**. The maximum size for submissions is **20MB**.

5.2 Method

Each Respondent must make its Submission via the tenders@wapha.org.au email address, unless notified otherwise by WAPHA.

Specific items to consider are:

- Submissions must be made by the Closing Time as WAPHA will not accept Submissions after this time;
- the Submission cannot be more than 20MB in total.

5.3 Withdrawal of Submission

Respondents may withdraw their Submission at any time before the closing date by doing so through by emailing tenders@wapha.org.au

Such a withdrawal shall not prejudice to the Respondents right to lodge a Submission in relation to any other Request issued by WAPHA or for such a Submission to be given equal and fair consideration.

5.4 Validity Period

Submissions shall remain valid for acceptance by WAPHA for a period of 90 days from the Closing Time.

Where WAPHA seeks an extension of the Validity Period, a request in writing will be given to the Respondent. The Respondent must respond in writing to confirm the extension. Failure to respond may result in the Respondent not being considered any further.

5.5 Best Offer

Respondents should ensure that any offer made in their Submission should be their best offer and that WAPHA will be evaluating it on that basis.

5.6 Non-Conformance Schedule

The Respondent must complete the Non-Conformance Schedule with the Submission. The purpose of the Non-Conformance Schedule is to highlight those clauses in the Request or the Draft Services Agreement which the Respondent does not accept or will not be able to fully comply with.

5.7 Goods and Services Tax

When making its Submission, the Respondent must clearly specify in relation to each price, rate, fee or charge offered; the price, rate, fee or charge exclusive of GST.

5.8 Costs

All costs incurred in developing and submitting a Submission and any subsequent meetings for the purpose of evaluation, clarification or any other matter prior to entering into an Agreement with WAPHA shall be borne by the Respondent.

6. RESPONDENTS OBLIGATIONS

6.1 Respondent's acknowledgment

By providing a Submission in response to this Request, a Respondent will be deemed to have acknowledged and agreed that it has done so on the basis that it has:

- a) the necessary skills, knowledge and experience to perform the services detailed in this Request; and
- b) In preparing its Submission it has:
 - i) fully examined the Request and any other information made available or provided to the Respondent; and
 - ii) made its own reasonable enquiries to fully inform itself of all the risks, contingencies and other circumstances which may impact upon the Request and the proper performance of work; and
 - iii) not relied upon any representation by way of this Request or otherwise made on behalf of WAPHA; and
- c) satisfied itself as to the accuracy and sufficiency of the Submission to achieve the due and proper performance and completion of the Respondent's obligations under the Request.

6.2 Performance

In providing a Submission in response to this Request, the Respondent shall be deemed to guarantee that the performance of the services under the Request complies with or exceeds the requirements of this Request.

6.3 Independence

Respondents shall develop, compile and submit their responses independently using its own resources, without consultation, communication, agreement or understanding for the purpose of restricting competition as to any matter with any other Respondent, competitor or other third party.

6.4 Confidentiality

The information included within the Request documents and any attachments, annexures and appendices and any subsequent discussions and/or interactions you may have with WAPHA in connection with this Request are acknowledged as being confidential information and shall be treated as such.

Respondents agree that such confidential information shall not be disclosed or otherwise made known to any person or persons, except to the extent that such disclosure is required to enable a Respondent to develop its Submission in response to this Request, and on the condition that any person to whom confidential information or knowledge of such information is disclosed to is bound by an agreement that is no less restrictive than these conditions.

These requirements shall apply to the Request process and information or knowledge that the Respondent becomes aware of relating to the Request, except for knowledge that is publicly available.

6.5 Copyright

By making a Submission the Respondent agrees to:

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

Without the express prior written consent of WAPHA or otherwise in accordance with law, the Respondent must not re-produce, re-advertise and or in any way use the contents of this Request, either in whole or in part.

6.6 Interference & inducements

No attempts shall be made by the Respondent to:

- a) induce any other person or organisation to submit or not to submit a Submission or to alter, amend or otherwise interfere with the independence of any other Respondent in developing and making a Submission; or
- b) seek to employ or engage the services of any person who has a duty to WAPHA as an adviser, consultant or employee (or former adviser, consultant or employee) in relation to this Request; or
- c) offer any incentive to, or otherwise attempt to influence, any employee of WAPHA or any member of an evaluation committee at any time.

6.7 Media

Respondents shall not make any news releases or responses to media enquiries and questions pertaining to this process without WAPHA's prior written approval.

6.8 Conflict of interest

The Respondent must disclose all details of any conflict of interest or potential conflict of interest in its Submission.

6.9 Change in circumstances

The Respondent must promptly inform WAPHA of any material change to any information provided by the Respondent or of any event that would potentially have an impact on the financial position and capacity of the Respondent which occurs after making its Submission. This includes any change to the identity or structure of the Respondent or its subcontractors.

6.10 Reliance on information

Submissions are made on the basis that the Respondent acknowledges that it has made all necessary enquiries and informed itself fully about all matters relevant to the performance of the services to which the Request relate, and that it has not relied on any express or implied statement, warranty or representation, whether oral, written or otherwise, made by or on behalf of WAPHA unless expressly contained in the Request documents.

7. RESERVATION OF RIGHTS

WAPHA makes no representation or guarantee that any Agreement shall be entered into with any Respondent as a result of this Request and reserves the right to:

- a) invite any person or entity to make a Submission in response to this Request;
- b) extend the Closing Time;
- c) extend the Validity Period;
- d) allow a Respondent to change its Submission before the completion of evaluation of Submissions, but only if the same opportunity is given to all Respondents;
- e) consider a Submission submitted other than in accordance with these Conditions of Request;
- f) issue amendments or additions to this Request at any time before the Closing Time;
- g) consider an incomplete Submission;
- h) Suspend, terminate or abandon this Request process at any time;
- i) clarify any aspect of a Submission after the Closing Time;
- j) seek the advice of external consultants to assist in the evaluation or review of Submissions;
- k) make enquiries of any person or entity to obtain information about the Respondent and its Submission;
- l) seek information from any Respondent ;
- m) following evaluation of Submissions, invite revised Submissions from one or more Respondents;
- n) following evaluation of Submissions, negotiate with one or more Respondents;
- o) negotiate with a Respondent for the provision of any part of the Request, and to negotiate with any other Respondent with respect to the same or other parts of the Request;
- p) enter into direct negotiations with any other person or entity who is not a Respondent; and
- q) discontinue negotiations at any time with any Respondent.

8. PROCESS

8.1 Opening of Submissions

WAPHA does not warrant that the names of Respondents will be made available to any of the Respondent parties or the public, nor shall WAPHA be liable to release such information.

8.2 Non-conforming Submissions

Any Submission which does not comply with the requirements of this Request may be classified as non-conforming and may be excluded from further consideration. The decision as to whether a Submission is non-conforming or not, and whether it is accepted or excluded from further consideration, are matters that are within WAPHA's sole and absolute discretion.

8.3 Errors in Submissions

8.3.1 WAPHA, in its sole and absolute discretion, may exclude from consideration any Submission in which it considers that any requested information is not clearly or intelligibly stated.

8.3.2 If a Respondent becomes aware of any discrepancy, error or omission in its Submission and wishes to lodge a correction or additional information, it can only do so if:

- a) WAPHA agrees to accept the provision of such correction or additional information from the Respondent;
- b) the correction or additional information is provided to WAPHA within any time limit specified by WAPHA; and
- c) the correction or additional information is provided to WAPHA in writing and is signed by the Respondent.

8.4 Clarification of Submissions

When requested to clarify any matter contained in a Submission or to provide additional information, Respondents shall provide such clarification and/or information in writing at the time and place stipulated by WAPHA. Failure to comply with such request may result in the Respondent being excluded from further consideration.

8.5 Conduct of Respondent

If a Respondent is found to have offered any form of enticement to an employee or their relative, its Submission will be rejected by WAPHA.

If a Respondent is found to have discussed its Submission with any employee of WAPHA at any time prior to the awarding of a contract to the successful Respondent, its Submission may be rejected by WAPHA.

8.6 Exclusion of liability

In making a Submission, a Respondent will be deemed to have acknowledged and agreed that it will bear and be liable for all costs, damage, charges or expenses whatsoever and howsoever incurred in preparing its Submission and is not entitled to seek any compensation or reimbursement of those costs from WAPHA.

To the maximum extent permitted by law, WAPHA will not be liable in any respect whatsoever or howsoever to a Respondent, including in respect of any information supplied by WAPHA in the Request or in relation thereto. All representations by WAPHA, whether oral or in writing and whether express or implied, are hereby negated and excluded to the maximum extent permitted by law.

9. EVALUATION

9.1 General

Respondents can expect that WAPHA will:

- a) reserve the confidentiality of your Confidential Information;
- b) afford every Respondent the opportunity to compete fairly for the opportunity to enter into an Agreement for delivery of services;
- c) subject to WAPHA's right to terminate this process, consider a Submission which is submitted in accordance with the Conditions of Request by a Respondent who has fully completed the Submission Form and Non-Conformance Schedule (if applicable).

For the purposes of this clause, Confidential Information means any information designated by the Respondent as confidential, unless such information is already in the public domain.

9.2 Evaluation Methodology

9.2.1 Prequalification Criteria

If a Request has pre-qualification criteria a Respondents Submission fails to satisfy the pre-qualification criteria WAPHA may, at its sole discretion, remove the Submission from consideration and the Submission will not be evaluated.

9.2.2 Disclosure and Compliance Criteria

WAPHA may, at its sole discretion, having assessed the Respondents responses to disclosure and compliance criteria, determine that the Respondents Submission may not be evaluated and further.

9.2.3 Qualitative Criteria

WAPHA will evaluate Submissions on the basis that the Respondent has demonstrated that:

- a) it has the ability and capacity to deliver the services;
- b) entering into an Agreement with the Respondent does not create unacceptable risks; and
- c) the Respondent has demonstrated that it will be able to deliver Value for Money in providing the Services.

9.3 Value for Money

In assessing Value for Money, WAPHA will aim to achieve the best possible outcome for every dollar spent, by assessing the costs and benefits of, and risks inherent in, a Submission, rather than simply considering the lowest offered price.