



REQUEST FOR TENDER

Management of Sam Adams College

RFT 2023-2024-0605

15 April 2024

REQUEST FOR TENDER

1. BACKGROUND

Council is inviting tenders for an Organisation or Individual registered for GST (prior to contract commencement) to manage the day-to-day operations of Sam Adams College. Council requires all submissions to include a Resident Manager to reside in the Manager's Residence at the Facility. The scope of the contract also includes routine maintenance and cleaning of the Facility (including its grounds).

Refer to Tender Schedules Part A (Conditions of Contract) for details of the Scope.

2. PARTICULARS

Item	Issue	Variable
1.	Closing Time	2:00pm on 6 May 2024
2.	Contact Person	Name: Anna Marie Bird Email: procurement@muswellbrook.nsw.gov.au
3.	Site	Sam Adams College, 63 Maitland St, Muswellbrook NSW 2333
4.	Tender Validity Period	2:00pm on the date that is 60 Business Days after the Closing Time
5.	Indicative Timetable	Pre-tender meeting / Site inspection: 29 April 2024 Closing Time: As detailed in Item 1 Contract award: Early June 2024 Commencement of Services (as applicable): June 2024
6.	Pre-tender Meeting / Site inspection	Attendance is optional. Date: 29 April 2024 Time: 11:00AM Place: Sam Adams College Special Instructions: Register in accordance with Clause 6.3.
7.	Council's consultants	Not used.

CONDITIONS OF TENDERING

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this RFT:

Addendum has the meaning in clause 6.1.

Closing Time has the meaning in Item 1.

Contact Person means the person named in Item 2 or such other person notified to Tenderers by the Council in writing.

Contract means the contract set out in **Schedule 1**.

Council means Muswellbrook Shire Council (ABN 86 864 180 944).

eTendering Portal means www.vendorpanel.com.au/muswellbrook/tenders.

Item means an item included in clause 2 of the RFT.

RFT means this request for tender, including these Conditions of Tendering, the Schedules and all Addenda issued to Tenderers by the Council.

Schedule means a schedule to this RFT.

Services means the services described in **Schedule 1 (Conditions of Contract)**.

Site means the site identified in Item 3.

Tender means a tender submitted by a Tenderer in accordance with this RFT.

Tender Briefing has the meaning in clause 6.3.

Tender Form means the form set out in **Schedule 2**.

Tender Validity Period means the period stated in Item 4.

Tenderer means a person who submits a Tender in response to this RFT.

Works not used.

1.2 Interpretation

In this RFT:

- (a) a reference to time is to time in Muswellbrook;
- (b) a reference to **dollar** or **\$** is a reference to Australian dollars; and

- (c) the Council and Contact Person may exercise their respective discretions and rights under this RFT in their absolute discretion.

2. GENERAL

2.1 Contact Person

All inquiries or requests for information by Tenderers concerning this RFT must be made to the Contact Person via the online forum or to procurement@muswellbrook.nsw.gov.au if that forum is unavailable.

2.2 Timetable

As at the date of this RFT, the Council's timetable for this RFT is detailed in Item 5.

3. GOVERNMENT REQUIREMENTS

3.1 Local Government Act and Regulations

Each Tenderer acknowledges and agrees that the *Local Government Act* 1993 (NSW) and *Local Government (General) Regulation* 2005 (NSW) apply to this RFT and the Works or Services (as applicable) and it must comply with both insofar as they are applicable.

3.2 Ecologically sustainable development

The Council may reject any Tender if the relevant Tenderer is, or was at any time in the preceding 12 months, involved in any activity that is contrary to the principles of ecologically sustainable development.

4. TENDERER ELIGIBILITY

4.1 Acceptable legal entities

The Council only contracts with recognised and acceptable legal entities and does not contract with firms under any form of external administration.

Any Tender submitted by an unincorporated business, such as a sole trader or partnership, must identify the legal entity that proposes to enter into the Contract.

If a Tenderer submits its Tender as the trustee of a trust, it must submit a complete copy of the relevant trust deed with its Tender.

4.2 Work health and safety management

Tenderers must demonstrate their capacity to manage work health and safety in accordance with the Contract by submitting all information required by **Schedule 13**.

4.3 Financial assessment

Each Tenderer acknowledges and agrees that:

- (a) the Council may engage third parties to assess each Tenderer's financial standing; and
- (b) such person may obtain financial details regarding Tenderers in order to do so.

The Council may, at its absolute discretion, pass over a Tender if the financial standing of the relevant Tenderer is unacceptable to the Council.

Each Tenderer must submit with its Tender the information required by **Schedule 11**.

5. LEGISLATIVE ISSUES

5.1 Disclosure of Tender and Contract information

Each Tenderer acknowledges and agrees that the:

- (a) Council may disclose details of the RFT and any Tender(s) or contract awarded in:
 - (i) accordance with the *Government Information (Public Access) Act 2009* (NSW) and *Ombudsman Act 1974* (NSW); and
 - (ii) response to any request from a relevant Minister of the NSW Government or the NSW Auditor-General; and
- (b) Contact Person and Council will not be liable to any Tenderer upon any claim arising out of or in connection with the disclosure of information in accordance with this clause 5.1.

5.2 Exchange of information by the Council

Each Tenderer:

- (a) authorises the Council to gather, monitor and assess and communicate to other State and Commonwealth Government agencies and local government authorities information about the Tenderer's financial position and its performance; and
- (b) acknowledges and agrees that:
 - (i) any such information may be used by those agencies or authorities in considering whether to offer the Tenderer future opportunities;
 - (ii) the Council is entitled to rely on the defence of qualified privilege for the purposes of the *Defamation Act 2005* (NSW) in making information available in accordance with this clause 5.2; and
 - (iii) it releases and indemnifies the Council from and against all claims the Council may suffer or incur arising out of or in connection with anything authorised by this clause 5.2 or done by a recipient of relevant information.

6. ADDENDA, MEETINGS AND ADDITIONAL INFORMATION

6.1 Addendum

The Council may only amend or clarify this RFT by issuing an addendum to all prospective Tenderers headed “Addendum in Respect of RFT [reference]” (**Addendum**).

6.2 Site access restrictions

A Tenderer and its agents or representatives must only access the Site with the prior written consent of, and at times pre-arranged with, the Contact Person.

6.3 Pre-tender meeting / Site inspection

A pre-tender meeting / Site inspection (**Tender Briefing**) will be held in accordance with Item 6 to:

- (a) answer Tenderer queries concerning the Works or Services (as applicable) and this RFT; and/or
- (b) allow Tenderers to inspect the Site.

Each Tenderer must inform the Contact Person of the persons who will attend the Tender Briefing on its behalf (a maximum of 3 people per Tenderer) no later than 2:00pm on the date that is 3 days prior to the Tender Briefing.

Each person who attends the Tender Briefing does so on the following bases:

- (c) attendees cannot rely on any statement made at the Tender Briefing by or on behalf of the Council unless it is confirmed by the Council in an Addendum;
- (d) questions raised during the Tender Briefing and the Council’s answers will be issued to all Tenderers;
- (e) the Council’s representatives and advisors must not be asked any questions about the Works or Services (as applicable) before the Tender Briefing commences, after it concludes or during any breaks;
- (f) attendees are not permitted to leave concepts, designs, documents or other material with any Council representative before the Tender Briefing commences, after it concludes or during any breaks;
- (g) prior to the Tender Briefing, attendees must, if directed by the Council, sign an indemnity in favour of the Council in respect of the attendees’ access to the Site and any other Council premises;
- (h) each Tenderer will bear its own costs associated with its attendance at the Tender Briefing and will have no claim against the Council in relation to any such costs; and
- (i) attendees must wear appropriate dress and will be responsible for their own safety.

7. CONDITIONS OF TENDERING

7.1 Council's rights

Nothing in this RFT obliges the Council to proceed with all or any of the Works or Services (as applicable) or this RFT and the Council may elect:

- (a) not to proceed with all or any of the Works or Services (as applicable) or this RFT; or
- (b) to proceed with all or any of the Works or Services (as applicable) in ways other than those contemplated in this RFT.

Each Tenderer acknowledges and agrees that the Council will not be liable upon any claim arising out of, or in any way in connection with:

- (c) the exercise of, or any failure to exercise, any right reserved to the Council under this RFT; or
- (d) a Tenderer acting upon this RFT, responding to this RFT, preparing a Tender or otherwise acting in reliance on this RFT or any part of it.

The Council reserves the right to vary this RFT at any time prior to awarding any contract and each Tenderer agrees that this may include the Council:

- (e) rejecting or refusing to consider or evaluate any Tender or all Tenders;
- (f) amending all or part of this RFT;
- (g) withdrawing this RFT;
- (h) terminating, suspending or deferring the process contemplated in this RFT;
- (i) readvertising for new Tenders;
- (j) waiving any requirement of this RFT;
- (k) considering or accepting a non-conforming tender or tenders;
- (l) accepting a substitution of, withdrawal of, or addition to any of the parties comprising a Tenderer;
- (m) terminating further participation, or recommencing participation, in the RFT process by any Tenderer(s);
- (n) requiring additional information or further offers from any Tenderer(s);
- (o) conducting a subsequent procurement process and utilising and disclosing any information gained in this RFT process for that purpose;
- (p) varying any process concerning the consideration or evaluation of any Tender(s);

- (q) entering into discussions or negotiations with any person in relation to the subject of this RFT, regardless of whether such person submitted a Tender and such negotiations:
 - (i) may result in the amendment of a particular Tender (no matter how substantial); and
 - (ii) do not require the Council to provide each Tenderer with the same information, opportunity to negotiate or proposed amendment;
- (r) discontinuing negotiations with any Tenderer for any or no reason;
- (s) separating components of the Works or Services (as applicable) and negotiating separately with any Tenderer(s) or anyone else in respect of those components;
- (t) accepting only part of a Tender; or
- (u) accepting Tenders from more than one Tenderer.

7.2 No process contract

Neither this RFT, the RFT process, the submission of a Tender or the evaluation of a Tender by the Council, creates a “process contract” or any other express or implied contract between a Tenderer or Tenderers and the Council.

Tenderers will have no claim against the Council arising out of or in connection with the Council’s exercise or failure to exercise any right, power or discretion afforded to it in this RFT.

7.3 No liability for electronic document transmission, data loss and viruses

Each Tenderer acknowledges and agrees that:

- (a) it receives and transmits electronic information in respect of this RFT at its own risk (including the risk of data loss and computer viruses); and
- (b) the Council will have no liability for any loss or damage suffered by any Tenderer arising out of or in connection with any electronic transmission in respect of this RFT.

7.4 Warranty by Tenderer

Each Tenderer warrants to the Council that its Tender is submitted on the following bases:

- (a) it has fully informed and satisfied itself of all matters relevant to its Tender;
- (b) it has satisfied itself with regard to all relevant information given to it by the Council;
- (c) it accepts full responsibility for its interpretations, deductions and conclusions arising from information it obtains from the Council; and

- (d) it is aware of Part V of the *Competition and Consumer Act* 2010 (Cth) in relation to the giving of false and misleading information.

7.5 Tender Validity Period

Each Tender is valid and open for acceptance by the Council for the term of the Tender Validity Period.

7.6 Probity and conflict of interest

Tenderers must conduct themselves with propriety at all stages during the RFT process, including by not:

- (a) offering inducements, commissions, gifts or rewards to employees or agents of or advisers to the Council;
- (b) attempting to discuss any matter in relation to their Tender or any other Tender with any employee or agent of or adviser to the Council, excluding the Contact Person; or
- (c) otherwise acting improperly or in bad faith.

A Tenderer must immediately notify the Contact Person in writing if it becomes aware of any potential or actual conflict of interest (whether pecuniary or otherwise) and may be excluded from the RFT process if such issue cannot be resolved to the Council's satisfaction.

As at the date of this RFT, the entities identified in Item 7 are advising the Council in respect of this RFT.

8. PREPARATION OF TENDERS

8.1 Alternative tenders

The Council may consider alternative tenders, provided that the:

- (a) relevant Tenderer has also submitted a Tender; and
- (b) alternative tender:
 - (i) clearly identifies the points of departure from this RFT and the reasons for them; and
 - (ii) includes documented and comprehensive evidence of the advantages of the alternative tender to the Council.

8.2 Non-compliant tender

Tenderers must complete and submit all of the Schedules.

Any tender which does not comply in full with this RFT may be considered non-conforming and excluded from consideration by the Council at its absolute discretion.

8.3 Costs

No payment will be made by or on behalf of the Council to any Tenderer in respect of any cost, expense, loss or damage suffered or incurred by a Tenderer arising out of or in connection with this RFT, the process contemplated within it or any Tender.

8.4 Joint Tenders

Joint Tenders may be submitted provided that only one party is nominated as the Tenderer.

Unless otherwise agreed by the Contact Person in writing, a tender will not be accepted by the Council to perform only part of the Works or Services (as applicable).

8.5 No collusion

In preparing its Tender, each Tenderer must not:

- (a) communicate or have any arrangement or arrive at any understanding with any other actual or potential Tenderer which in any way reduces, or could have the effect of reducing, the competitiveness of the RFT process;
- (b) engage in practices that might be regarded as collusive or anti-competitive; or
- (c) engage in unethical or inappropriate conduct,

and if a Tenderer is found to have done so, it will be disqualified from the RFT process.

8.6 Execution of Tender Form

The Tender Form must be executed for and on behalf of a Tenderer by a person or persons with authority to bind that Tenderer for the purposes of this RFT.

9. SUBMISSION OF TENDERS

9.1 Documents to be submitted

Each Tenderer must:

- (a) submit to the Council:
 - (i) a completed, dated and executed Tender Form; and
 - (ii) completed versions of all other Schedules;
- (b) only provide information that is relevant and requested in this RFT;
- (c) ensure that all Schedules are completed in a clear and concise manner;
- (d) not change the text of the Tender Form or any Schedule, other than to insert the requested information; and

- (e) acknowledge in the Tender Form, by listing all Addenda, that their Tender allows for all Addenda issued by the Council.

Information included in a Tender that is not required by this RFT may be disregarded.

9.2 Schedule structure

Tenderers must structure their Tenders in accordance with the Schedules.

9.3 Assumptions and qualifications

Tenderers must:

- (a) obtain clarification of all matters they consider ambiguous before submitting their Tender; and
- (b) clearly identify all assumptions and qualifications in **Schedule 5** to their Tender.

9.4 Confidentiality

All information contained or referenced in this RFT is confidential and may only be used for the purpose or responding to this RFT. Tenderers must not disclose any such information to any person, other than to persons engaged in the preparation of their Tender.

9.5 Privacy

Each Tenderer warrants that all:

- (a) personal information included in its Tender is accurate, up-to-date and complete; and
- (b) relevant people authorised the collection and use of their personal information for the purposes contemplated in this RFT.

9.6 Request for clarification

If a Tenderer wishes to clarify any matter concerning this RFT, it:

- (a) must notify the Contact Person in writing of its request no later than 7 days prior to the Closing Time; and
- (b) acknowledges and agrees that the Council's answer may be issued to all Tenderers.

9.7 Submission procedure

Tenders must be submitted by the Closing Time.

If more than one Tender is submitted by a Tenderer, it must mark each submission clearly as to whether it is an alternative tender or supersedes an earlier Tender.

9.8 Late Tenders

Late Tenders will not be accepted by the Council, except where the cause of the late submission is reasonable and accepted by the Contact Person.

9.9 Tender submission

All Tenders must be lodged through the eTendering Portal or alternatively as physical Tenders, which must be:

- (a) submitted by sealed envelope;
- (b) clearly marked with the name and identification number of the RFT; and
- (c) submitted by:
 - (i) post to 60 - 82 Bridge Street, Muswellbrook NSW 2333; or
 - (ii) placement into the tender box located at 60 - 82 Bridge Street, Muswellbrook NSW 2333.

Tenders submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000 (NSW)*.

Lodgement of a Tender electronically is evidence of a Tenderer's acceptance of this RFT and all other conditions shown on the eTendering Portal.

The Council may decline to consider any Tender that cannot be effectively evaluated because it is incomplete or corrupt.

9.10 Electronic files

Tenders submitted electronically must be submitted in pdf format.

All Tender documents submitted electronically:

- (a) may be compressed in any format that can be decompressed by WinZip; and
- (b) must:
 - (i) not include self-extracting (*.exe) zip files;
 - (ii) not include macros, applets or executable code or files;
 - (iii) be free from viruses;
 - (iv) be capable of being printed by the Council without loss of information or formatting; and
 - (v) not have invalid characters or lengthy file names/loading pathnames.

All CAD files submitted with a Tender must be:

- (c) in DGN, DWG or DXF format; and
- (d) submitted such that they correctly display and print in Microstation / AutoCAD.

9.11 Two-envelopes

For the purposes of this clause 9.11, “package” means:

- (a) an electronic file where a Tender is submitted using the eTendering Portal; or
- (b) a physical envelope where the eTendering Portal is unavailable.

All Tenders must be lodged in two separate and clearly identified packages, the:

- (c) first of which must:
 - (i) be marked “**Envelope 1: Non-price information**”;
 - (ii) include completed **Schedules 6 – 22**; and
 - (iii) not include any pricing information relevant to the Tender; and
- (d) second of which must:
 - (i) be marked “**Envelope 2: Price information**”;
 - (ii) include completed **Schedules 2 – 5**; and
 - (iii) include all pricing information requested in this RFT.

10. EVALUATION OF TENDERS

10.1 Evaluation criteria

In evaluating Tenders, the Council may consider factors including, but not limited to:

- (a) compliance with this RFT (including the Contract);
- (b) tendered pricing, including the breakdown in **Schedule 3**;
- (c) Schedule of Rates – **Schedule 4**;
- (d) Tenderer assumptions and qualifications;
- (e) non-price criteria (in priority order with most important listed first):
 - (i) previous performance, experience and capability;
 - (ii) experience of the Tenderer’s proposed personnel;

- (iii) work health and safety performance;
 - (iv) local content;
 - (v) delivery time;
 - (vi) current commitments;
 - (vii) financial capacity;
 - (viii) demonstrated ability to provide satisfactory quality assurance and insurances;
 - (ix) industrial relations performance; and
 - (x) environmental management performance;
- (f) performance methodology; and
- (g) innovation.

The Tender submissions will be assessed using a weighted scoring process based on information provided with the Tender. The ratio of price to non-price criteria will be 30:70.

The Council may treat any detail required by this RFT which is omitted, illegible or unintelligible as failing to fulfil the relevant requirement.

10.2 Requests for additional information

The Council may at any time direct a Tenderer to provide additional information concerning:

- (a) all or part of its Tender, including for the purposes of:
 - (i) clarifying any part of or correcting any perceived errors in its Tender; or
 - (ii) the Council obtaining all information required by this RFT; and
- (b) issues identified by the Council during its evaluation process, which may include the Tenderer further developing, refining and resubmitting part(s) or all of its Tender,

and the relevant Tenderer must comply with such direction.

10.3 Interviews

If directed by the Contact Person, nominated members of a Tenderer's team must attend and actively participate in interviews with the Council and its nominees.

10.4 Acceptance of Tender

The Council may accept tenders that do not conform with this RFT, but is not obliged to do so.

The Council is not bound to accept the lowest priced or any Tender. Tenders which do not comply with this RFT may be passed over.

No Tender is accepted by the Council unless it gives such acceptance in writing.