

## Strategic Procurement

# Tendering for Goods and Services at Edith Cowan University

Includes  
Conditions of Responding  
to a Request

### ECU Contact Details

<b>Web</b>	<a href="https://www.ecu.edu.au/centres/finance-and-business-services/our-services/information-for-suppliers">https://www.ecu.edu.au/centres/finance-and-business-services/our-services/information-for-suppliers</a>
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## 1.0 INTRODUCTION

The University is committed to conducting procurement activities in an ethical, legal and socially responsible manner. The University expects that suppliers that are appointed to provide goods and/or services share this commitment and comply with all applicable laws, codes or regulations of the countries, states and localities in which they operate.

Many individual contracts are established each year between the University and its suppliers. These contracts supply a diverse range of University business needs from the purchasing of information technology to the engagement of consultants, construction activities and service/maintenance arrangements.

## 2.0 DEFINITIONS

Term	Definition
<b>Closing Date</b>	Date and time specified in the request.
<b>Conforming Submission</b>	A Submission by the respondent that complies with the requirements of the Request or is deemed in ECU's discretion to comply with the requirements of the Request.
<b>Contract</b>	A contract between the Respondent and ECU for the supply of Goods and/or Services.
<b>Contract Term</b>	Term of the contract including options to extend the term.
<b>Contractor</b>	Respondent awarded the Contract to supply the goods or services specified in the Request.
<b>General Terms and Conditions</b>	ECU General Terms and Conditions of Contract for Goods and/or Services.
<b>Process</b>	Process commencing with the Request concluding on either the award of a Contract or abandonment of the Request.
<b>Request</b>	Request for tender, request for proposal, or request for expression of interest as the case may be.
<b>Respondent</b>	Person/s or corporation/s providing a Submission in response to a request.
<b>Schedule</b>	Schedule/s in the Request.
<b>Scope of Works</b>	All the works referred to in the contract, including all variations specified and all minor terms of work needed to complete the works properly.
<b>Services</b>	Specification of services set out in the request.
<b>State</b>	State of Western Australia.
<b>Submission</b>	A response to the Request.
<b>Supplier</b>	Respondent submitting a response with the intent to supply goods and/or services.
<b>University</b>	Edith Cowan University.

## 3.0 UNIVERSITY POLICIES / GUIDELINES

There are a number of University policies and guidelines that regulate purchasing from suppliers. These policies provide the framework for purchasing and contracting.

It is the supplier's responsibility to familiarise themselves with these policies prior to responding to a quote or tender for Services which are not limited to:

- [Contractors Policy](#)
- [Environmental Management of Information Technology Policy](#)
- [Hazardous Chemicals Policy](#)
- [Sustainability Policy](#)
- [University's Disability Access and Inclusion Plan](#)
- [Work Health and Safety Policy](#)

## 4.0 PURCHASING

Policy, procedure, risks and environment aspects are considered when determining the most appropriate purchasing method.

### 4.1 Request for Tender / Request for Proposal

For higher value, high risk or complex purchases, a Request for Tender (RFT) or Request for Proposal (RFP) process will be undertaken. This provides an equitable opportunity for all relevant suppliers to provide a Submission. The RFT or RFP will detail the services and functional requirements of the Contract, the terms and conditions under which the Contract will be entered into, the qualitative and quantitative requirements to enable the University to assess the Submissions, the price offered and any other considerations such as confidentiality and conflict of interest.

Pre-tender briefings and site visits may be a pre-requisite of the process and Respondents are reminded that failure to attend these may warrant exclusion of their Submission. Details of briefings and site visits will be included in the Request documentation for clarity.

It is important to note that the University will make a decision about awarding the Contract after the evaluation of Submissions or may seek clarification of Submissions during evaluation. Reference checks and relevant approvals will be requested during the process so Respondents are to ensure that this information is provided as part of their Submission.

#### 4.1.1 Advertising Requests

All Requests are placed on the Tenders WA website <https://www.tenders.wa.gov.au> for viewing and downloading. The Tenders WA website has guidelines on how to register to receive email notification of new Requests and suppliers are to be advised that to use this facility the correct version of Java is to be installed before attempting to utilise the system.

The University may choose to advertise Requests in publications such as the West Australian or the Australian to ensure that Requests are viewed by a larger audience.

#### 4.1.2 Considerations

Before preparing a Submission, Respondents are reminded to familiarise themselves with the University's policies (as outlined in [Section 3](#)) and ensure that they meet the key components of the proposed contract namely:

- a) pre-tender briefings and site visits have been attended;
- b) relevant references can be provided;
- c) General Terms and Conditions and any Special Conditions can be accommodated;
- d) environmental considerations can be accommodated;
- e) copies of Certificates of Currency for insurances as outlined in the General Terms and Conditions can be provided;
- f) any quality, safety and health and environment accreditations can be met and if appropriate, copies of certifications can be provided;
- g) the scope of services can be fulfilled including performance indicators, timescales and methodology;
- h) relevant expertise is available or sub-contracting arrangements can be put in place;
- i) the organisational structure is appropriate for the size and complexity of the contract;
- j) contractual requirements can be delivered financially; and
- k) potential conflict of interest or confidentiality issues have been identified.

#### 4.1.3 Preparing a Submission

The Submission will take the form of two parts. Part 1 includes five schedules which are to be addressed as detailed below and Part 2 is for the Respondent to complete and return as their Submission:

- a) Schedule 1 refers to the specifics of the Submission e.g. closing date, contract commencement date and term;
- b) Schedule 2 outlines the scope of the Contract to be undertaken, including performance indicators, approach, methodology, references etc;

- c) Schedule 3 refers to the criteria required for assessment - compliance criteria such as attendance at site briefings, conformance to General Terms and Conditions, insurances, environment considerations, references, financial undertakings as they relate to the contract plus the qualitative criteria with respect to the ability to carry out the contract e.g. demonstrated experience, access to appropriate personnel/materials, administrative processes in place, financial stability etc.
- d) Schedule 4 refers to the Contract terms to be applied;
- e) Schedule 5 refers to any statements that are to be signed.

It is important that suppliers address all the schedules within the Request documentation as incomplete Submissions may be excluded from evaluation.

The compliance and qualitative criteria in Schedule 3 of the Request documentation are the components that will be evaluated by the University. Compliance criteria are scored on a yes/no basis and are not point scored. The qualitative criteria are point scored 1-5 (5 being exceptional and 1 deficient) and weighted dependent on the importance of that aspect to the Contract. Details of the weightings are outlined in the Request documentation and the scores awarded are shown based upon the explanation below at *Figure 1*. It is important to give significant consideration to those aspects with a higher weighting.

In order to respond more effectively to these requirements it is important to:

- a) address all of the selection requirements by entering information as requested in Part B;
- b) use Microsoft Word, Excel and Powerpoint to create the Submission;
- c) detail claims against each specific requirement attaching documentary evidence;
- d) use each selection requirement as a heading and describe the things that specifically demonstrate ability to meet this requirement; and
- e) attach all the Requested statutory documents to the Submission.

**Figure 1 – Point Score for Qualitative Submissions**

Point Score	Explanation
5	Excellent to Exceptional response: Exceeds or readily satisfies all requirements, exhibits all desirable strengths, and displays minimal risks, weaknesses or omissions.
4	Good to Superior response: Satisfies all requirements, but displays some minor risks, weaknesses or omissions that would be acceptable as offered.
3	Adequate to Acceptable response: Minimally compliant with requirements, and/or displays some risks, weaknesses or omissions that are possible to correct and make acceptable.
2	Deficient to Poor response: Does not satisfy all requirements, and/or displays risks, weaknesses or omissions that would be difficult to correct and make acceptable.
1	Unacceptable response: Does not meet the requirements. Unresponsive to requirements and/or demonstrably deficient in terms of risks, weaknesses and omissions.
0	Non response.

4.1.4 Methods of Submission

All Submissions are to be uploaded electronically via the Tenders WA website. As a commitment to sustainable practises by the reduction of waste, the University is no longer accepting Submissions in hard copy format.

As Tenders WA website is the Western Australian Government's tender portal, all WA's entities (except private organisations) can use this site to publish their tenders. Documentation must not exceed the 20mb download restrictions.

As the Tenders WA site is shared by many users, there may be times problems are encountered uploading documents. This could be due to many tenders closing at the same time. It is therefore strongly advised that Respondents plan to upload Submissions well in advance of the tender Closing Date (suggest 3 hours prior) and to check the website for any planned outages.

The University is not (and will not be) responsible for any difficulties uploading Submissions. If problems are experienced 3 hours prior to the tender closing date, then the name of the person nominated as the contact for 'submission enquiries' in the Request documentation can be notified. The University may then suggest an alternative method to be undertaken.

Submissions will not be accepted in any other format, unless specifically stated in the Request. As each Submission is different, it is the suppliers' responsibility to read and understand the methods of Submission valid for the specific tender.

#### 4.1.5 Changes to Requests / Submissions

Occasionally there may be a need to provide additional information or clarification on the requirements of the Request. For example, the closing date may be extended or additional information may be provided to respondents. In such circumstances an addendum will be uploaded to the Tenders WA website. The Tenders WA website will issue an automatic email advice to suppliers that have downloaded the tender documents. Respondents are to acknowledge receipt of the change as part of their Submission.

#### 4.1.6 Evaluation Process

The University will appoint an evaluation panel consisting of University staff members, and/or industry experts, who have knowledge of the Services to be provided and the evaluation process to be undertaken. Each panel member evaluates each qualitative Submission independently, with a final consensus score agreed by the whole panel.

Pricing requirements and due diligence are undertaken independent of this qualitative evaluation process ensuring that the University applies the principle of seeking best 'value for money.' The Submission price is considered a factor alongside the capability of the supplier to undertake the contractual obligations. Submissions including factors such as promoting an innovative local business, implementing new technological advances and reducing impact on the environment will be considered favourably and will be awarded a higher point score. Information with regards to insurances, financial capacity, ownership and references are also checked during the evaluation process. A probity advisor is appointed to oversee the whole evaluation ensuring transparency and fairness of process.

Therefore, although price is considered, the Submission offering the lowest price will not necessarily be accepted, neither will the Submission ranked the highest on the qualitative criteria.

## 4.2 Request for Expressions of Interest

A pre-qualification evaluation may be required where the value of the contract is high, there are many suppliers known to have the capability to supply, the contract is complex, or the University has not undertaken similar contractual services before.

In these instances, potential suppliers are asked to respond to a formal Request for Expressions of Interest which will assess a Respondent's ability to meet or exceed the University's contractual requirements with particular emphasis on fit for purpose and supplier qualifications.

A formal RFT/RFP will then be conducted.

Requests for Expressions of Interest are advertised as outlined in [Section 4.1.1](#).

## 4.3 Contractual Award

The University will enter into contract negotiations with suppliers shortlisted following the RFT/RFP or quotation process. This ensures that the scope of work, service levels, pricing, and terms and conditions of business are clearly defined and agreed upon.

#### 4.3.1 Contract Variations

There may be instances where variations are required once the contract has been awarded. Variations are negotiated where either the supplier or the University wishes to alter the original scope or where unforeseen circumstances affect the requirements of the Contract.

If a Contract requires substantial variation to maintain effectiveness, it may need to be re-negotiated or terminated and the Request re-called to balance the interests of the University and suppliers.

## 5.0 CONDITIONS OF RESPONDING TO A REQUEST

### 5.1 Format of Submission

- 5.1.1 Submissions are to be lodged in accordance with Section 2 of the Request document. Failure to comply with the format requested may result in the Submission being rejected.
- 5.1.2 Respondents are to address each and every section of the Request using the same Appendix Number and Title as outlined in the Request in Part B.
- 5.1.3 When addressing acceptance of the Conditions of Responding to a Request, General Terms and Conditions and Special Conditions (if applicable) in Schedule 4, Respondents are to answer:
  - a) 'Noted and Understood' where the clause contains information only;
  - b) 'Noted and Agreed' or 'Noted and Not Agreed/Alternative', whichever is applicable where the clause contains contractual conditions. Where the answer is 'Not Agreed/Alternative' then the alternative is to be outlined and the Respondent is to address the non conformance on Appendix 6 of the Request document, acknowledging that the Submission is non conforming;
  - c) 'Noted and Comply' where the clause contains a Condition of Responding to a Request as outlined in [Section 5](#) of this document.

### 5.2 Late Submissions

- 5.2.1 Any Submissions lodged after the Closing Date will be late Submissions. Late Submissions will be excluded from consideration, except for the circumstances identified in [Section 5.3](#) of this document.

### 5.3 Criteria for Admitting Late Submissions for Evaluation

- 5.3.1 Late Submissions shall be admitted for evaluation only if it can be demonstrated that;
  - a) the Submission was uploaded to Tenders WA website three hours prior to the tender closing date and the supplier experienced technical difficulties which can be endorsed by Tenders WA;
  - b) subject to the requirements of Section 2 of the Request document, the Submission was received and endorsed at the University's mailroom but had not been transferred to the Tender Box; or
  - c) subject to the requirements of Section 2 of the Request document, the Submission was accepted by an official postal service for delivery or transmission to the nominated Tender Box at least 48 hours prior to the closing date for postal deliveries within Australia and at least 96 hours prior to the closing date for postal deliveries from overseas countries including New Zealand.
- 5.3.2 In determining a late Submission the University shall rely only on the following:
  - a) time stamps and outage information supplied by Tenders WA;
  - b) screen dumps taken by the supplier demonstrating technical difficulties in uploading the documentation to the Tenders WA website, with particular reference to dates and times difficulties were experienced
  - c) the date, time and personal endorsement on the Submission documents, by the officer taking receipt of the Submission; and
  - d) other receipts or certifications issued by the official postal service to the respondent.

- 5.3.3 No other marks or documents will be accepted as evidence. Where a Respondent fails to provide the information in this clause 5.3, the respondent will be excluded from further consideration.

#### **5.4 Costs of Responding**

- 5.4.1 Participation in any stage of the purchasing process, or in relation to any matter concerning a Request, will be at each Respondent's sole risk, cost and expense. The University will not be responsible in any circumstances, for any costs or expenses incurred by any respondent in preparing or lodging a Submission or in taking part in the purchasing process including, but not limited to, instances where:
- a) a Respondent is not short listed to enter into contractual negotiations;
  - b) the University decides not to proceed with a RFT/RFP following a Request for Expression of Interest;
  - c) the University decides not to outsource any or all of the Services relating to the Request;
  - d) the University exercises or fails to exercise any of its rights under or in relation to Request; or
  - e) the University makes information available or provides information to a Respondent relating to its assets, procedures, plans, tenders, or any possible future arrangements.

#### **5.5 Acceptance of Submissions / Short Listing**

- 5.5.1 Unless otherwise stated in the Request, Submissions may be accepted by the University in the University's discretion either wholly or in part. The University is not bound to accept the lowest Submission and may reject any or all Submissions.
- 5.5.2 Respondents have no right of appeal against any decision of the University in the purchasing process including assessing Submissions following Request for Expressions of Interest and short listing Respondents. The acceptance of a Request for Expressions of Interest does not oblige the University to proceed to issuing an RFT/RFP.

#### **5.6 Contractual Obligations**

- 5.6.1 The receipt and assessment of a Submission pursuant to the Request, any other conduct or statement of the University, or any of their employees, agents or officers in the course of the procurement process does not constitute an offer to contract, until formal contractual arrangements have been executed.

#### **5.7 General Terms and Conditions**

- 5.7.1 Submissions shall be deemed to have been made on the basis of, and to have incorporated the University's General Terms and Conditions. Respondent's exceptions and deviations to the University General Terms and Conditions are to be recorded within Part B Appendix 4 of the Request documents.

#### **5.8 Precedence of Documents**

In the event of there being any conflict between the terms and conditions herein and those in the General Conditions of Contract the terms and conditions appearing in the Request shall have precedence.

#### **5.9 Submitted Prices**

Unless otherwise indicated in the Request, prices shall be all inclusive and in Australian Dollars. Any charge not stated in the Submission as being additional will not be allowed as a charge against any transaction under any resultant Contract.

#### **5.10 Validity**

All Submissions shall remain valid and open for acceptance for a minimum period of 90 days from the closing date of the Request.



### **5.11 Price Basis**

- 5.11.1 Respondents must state the price basis applicable to the Services offered. The Respondent should note that preference may, in the University's discretion, be given to fixed prices for the term of the contract.
- 5.11.2 Where prices submitted are subject to variation during the term of the Contract, then the following provisions will apply:
- a) the proposed price variation provisions, arrangements or mechanism to measure cost movements, must accompany the Submission; and
  - b) the University will not accept any responsibility for error on the part of the Respondent.
- 5.11.3 Where any price list forms the basis of submitted prices and price variation provisions, then that list shall be the most current one issued and shall accompany the Submission.
- 5.11.4 Prices may be varied annually by the contractor upon written application to the University, subject to compliance with the General Terms and Conditions. No price variation is payable unless and until approved by the University in writing.
- 5.11.5 Notwithstanding, the General Conditions of Contract, no price increase shall be granted retrospectively nor backdated, prior to the date of the Contractor's written application submitted for the approval of ECU.
- 5.11.6 Provision of goods and services under the Contract, will not be withheld nor disrupted by formalities or disputes associated with Price Variation Provisions.
- 5.11.7 Any mark up arrangement inherent within the prices, whether implicit or explicit, shall be maintained for the duration of the Contract.
- 5.11.8 The University may, at its discretion, terminate a Contract where it is not fully satisfied with a Contractor's application for contract variation/s. Substantive documentation will be required to justify applications for revised contract prices during the term of the Contract.

### **5.12 Value for Money Policy**

- 5.12.1 Value for money is a key University policy objective to ensure that when procuring goods and/or services, the best possible outcome for every dollar spent is achieved by assessing the costs and benefits rather than simply selecting the lowest purchase price.
- 5.12.2 In assessing the costs and benefits to the University, the total cost of the product or service over the life of the requirement, fitness for purpose, timely delivery, and local support are considered.
- 5.12.3 An assessment of the wider benefits it may contribute to other objectives including business and industry development, environmental protection and energy conservation are fundamental.
- 5.12.4 Submissions may be evaluated using the following criteria:
- a) more readily available spare parts and servicing support;
  - b) more reliable warranty service;
  - c) shorter supply lines;
  - d) more convenient communications for contract administration;
  - e) avoidance of the vagaries of currency fluctuations;
  - f) better knowledge of Australian design manufacturing and quality standards;
  - g) greater scope for co-operative product development and influence over the supply base;
  - h) benefits to the University of companies that have a good record of industrial relations; and
  - i) benefit to the University from the transactions occurring within the local area and the employment created as a consequence.

### **5.13 Discounts**

Respondents must state the discount that will be given for:

- a) quantity purchases;
- b) settlement;

- c) electronic payment; and
- d) payment upon receipt of services (no invoice).

#### **5.14 Capacity to Trade Electronically**

The Respondent shall, where practicable, provide full details of electronic commerce facilities and their capacity to trade on-line. Information is to include:

- a) details of Respondent's web site and its functionality;
- b) the ability for orders to be processed on-line;
- c) electronic invoicing and payment options;
- d) tracking and reporting of orders and deliveries on-line; and
- e) current sites where an electronic trading service is being provided.

#### **5.15 Respondents to Inform Themselves**

5.15.1 Respondents shall be deemed to have:

- a) examined the Request documents, General Terms and Conditions, and any other information available in writing to the Respondents for the purpose of providing a Submission;
- b) examined all further information relevant to the risks, contingencies and other circumstances having an effect on the Submission, which is obtainable by making reasonable enquiries; and
- c) satisfied themselves as to the correctness and sufficiency of any Submission including prices submitted which shall be deemed to cover the cost of complying with all the conditions of responding and all matters and things necessary for the due and proper performance and completion of the goods/services described therein.

5.15.2 Failure by the Respondent to have done all or any of the foregoing shall not relieve the successful Respondent of their obligations to perform the Contract in accordance with the terms and conditions of the Contract.

#### **5.16 Process**

5.16.1 The lodging of a Submission by the Respondent constitutes a contract by the University with each Respondent. The terms of the Contract are set out in the General Conditions of Contract.

5.16.2 In consideration of its Submission being accepted for consideration, the Respondent agrees to the terms set out in this clause. The Respondent accepts that the Process exists merely for the propose of the evaluation committee making a recommendation as to which Respondent (if any) should be awarded a contract.

5.16.3 Following the evaluation of Submission and prior to awarding the Contract:

- a) there may be a requirement for the Respondent, to enter into discussions with the University to resolve any matter applicable to its Submission (excluding price);
- b) the discussions will not be conducted as parallel negotiations intent on trading one Respondent against another but undertaken as a separate exercise; and,
- c) if these discussions fail to achieve a satisfactory resolution, the University may give the Submission no further consideration.

5.16.4 ECU in the University's Discretion:

- a) reserves the right, at any time and from time to time, to cancel, vary, supplement, supersede or replace the Process (including the selection criteria) by written notice to the Respondents;
- b) is under no obligation to offer any Respondent a Contract for the Services; and
- c) reserves the right to not accept any of the Submissions.

- 5.16.5 The Respondent:
- a) agrees that, other than entry into the Process, there is no intention on the part of the University to enter into or create any other legal relationship with the Respondent; and
  - b) acknowledges that in entering into the Process, it has not relied on any information, representation or warranty except as expressly provided in the Request and in particular but without and limitation it has not relied, and may not rely, on any verbal advice, statement, representation or warranty of any officer, employee, agent or contractor of the University.
- 5.16.6 Each Respondent must bear all costs incurred by it in responding to the Request. Under no circumstances will any Respondent be entitled to receive any indemnification, refund or compensation from ECU in respect of costs incurred by it in the Process.
- 5.16.7 Where information in the Request has been provided by third parties, ECU has not taken any steps to verify the accuracy or completeness of that information. Accordingly, each Respondent agrees to participate in the Process on that basis and to make its own inquiries and to satisfy itself as to the accuracy of such third party information, if necessary by communicating directly with those third parties.
- 5.16.8 The Respondent will not seek to challenge any decision in respect of the Process by legal, administrative or any other proceedings.
- 5.16.9 The Process may only be varied or supplemented by written notice to each Respondent, such notice clearly stating that it is a variation of, or supplemental to, the Process.
- 5.16.10 ECU will issue either verbal or written orders for each consignment.
- 5.16.11 ECU's terms and conditions will apply to each and every order.
- 5.16.12 Goods covered by the Contract shall be supplied and delivered to ECU campuses in quantities as may be ordered from time to time.
- 5.16.13 Goods will be packed by the Contractor so as to avoid damage in transit.
- 5.16.14 All goods and documents consigned to ECU are to be clearly marked in accordance with either verbal or written instructions issued by ECU.

### **5.17 Identity of the Respondent**

- 5.17.1 The identity of the Respondent is fundamental to the University. The Respondent shall be the person, persons, corporation or corporations named as the Respondent in the Request and whose execution appears on the Offer by the Respondent as outlined in the Request document at Appendix 2. Upon acceptance of the Submission, the Respondent shall become the Contractor.
- 5.17.2 The Respondent must state whether the person submitting the Submission is acting as the agent of a third party, as trustee of a trust or acting for other beneficiaries and provide the details of such trust and beneficiaries.
- 5.17.3 It is the Respondent's responsibility to inform the University promptly of any material change to any information provided by the Respondent that would potentially have an impact on the financial position and capacity of the Respondent or any member of the Respondent's consortium.

### **5.18 Subcontracting**

- 5.18.1 Respondents must state if they intend to subcontract any of the Services and provide full details of the proposed subcontractor as if that subcontractor was a Respondent to the Request.
- 5.18.2 The University reserves the right to request an alternative subcontractor where skills and/or services do not meet requirements.
- 5.18.3 Subcontractors will be required to provide insurance in the same amount and endorsed as per the requirements of the head contract.

### **5.19 No Assignment**

The Request is personal to and not assignable or transferable by the Respondent or the legal personal representative of the Respondent without prior written consent of the University, which consent may be given or withheld in the University's discretion.

### **5.20 No Withdrawal**

The Request shall not be withdrawn by the Respondent after the Closing Date, without the prior written consent of the University, which consent may be given or withheld in the University's discretion.

### **5.21 No Masquerades**

- 5.21.1 If the Respondent is acting as an agent or trustee for or jointly with another person, persons, corporation or corporations this must be fully disclosed by the Respondent in their Submission.
- 5.21.2 If the Respondent fails to fully disclose the identity of all participants and the nature of the relationship to those participants, the Submission may be rejected at the University's discretion.
- 5.21.3 No claims by undisclosed participants will be recognised by the University in the Contract or as having any right, title or interest under the Request whatsoever.

### **5.22 Ownership of Respondent's Submissions**

- 5.22.1 All documents, materials, articles and information submitted by the Respondent as part of, or in support of a Submission shall:
  - a) become upon lodgement the absolute property of the University; and
  - b) not be returned to the Respondent at the conclusion of the Process;but the Respondent shall be entitled to retain copyright and other intellectual property rights therein unless otherwise provided in the Contract.
- 5.22.2 The University reserves the right to copy, adapt, modify, disclose (including without limitation for the purposes of an audit, governmental and Parliamentary reporting requirements and provision to Parliament or a Parliamentary committee) or to otherwise utilise any documents and materials submitted by a Respondent and, by lodging a Submission, Respondents are deemed to consent to this usage.

### **5.23 Disclosure of Criminal Convictions or Charges**

- 5.23.1 Respondents with prior criminal convictions, charges against them, or pending charges for offences involving dishonest or fraudulent conduct, or who have knowledge of or been informed of such charges or convictions against their officers, employees, or agents, may, in the University's discretion, be disqualified from consideration during the Process.
- 5.23.2 Failure by a Respondent to make any required disclosure may also in the University's discretion disqualify the Respondent from consideration for the Request.

### **5.24 Evaluation of Respondent's Capacity**

- 5.24.1 Respondents that cannot demonstrate sufficient capacity to fulfil the contract will not be considered as a Contractor.
- 5.24.2 The Respondent shall have in place and maintain management practices and processes that ensure the goods or services are provided in accordance with the specified requirements detailed in the Request and to the complete satisfaction of the University.
- 5.24.3 The University reserves the right to inspect the premises/facilities of any Respondent for the purposes of determining their ability to fulfil the Contract. The University may, in their absolute discretion, reject any Submission if the University determines that any premises/facilities are unsuitable for their intended purpose.

### **5.25 Provisions for Assuring Quality**

- 5.25.1 It is the University's preference that a Contract be awarded to a Respondent that has in place the quality requirements specified in the Request.
- 5.25.2 A Submission not complying with the quality assurance requirements will, at the University's discretion, warrant no further evaluation, specifically where the respondent cannot:
- a) provide goods or services in accordance with the specification detailed in the Request;
  - b) allow inspection on delivery to confirm conformance with the specified requirements;
  - c) allow receipt and acceptance/rejection of goods or services that do not meet the University's specified requirements; and
  - d) evidence a management system certified as complying with the requirements of the Request.

### **5.26 Use of Chlorofluorocarbons**

In accordance with the Government of Western Australia's strategy to reduce the use of chlorofluorocarbons, Respondents offering products containing chlorofluorocarbons, or manufactured by processes in which chlorofluorocarbons are used, will not be accepted where alternative products are available.

### **5.27 Environmental Considerations**

The University is dedicated to identifying and controlling the environmental impact of the goods and services being purchased. In accordance with ISO 14001 the successful Respondent, to the extent practicable, is to ensure that the goods or services being procured achieve the following environmental benefits:

- a) reduce cost of waste management;
- b) produce savings in consumption of energy and materials;
- c) increase use of recyclable materials;
- d) lower distribution costs;
- e) engage in more efficient transport logistics;
- f) improve the environmental image of the University among regulators and the public; and
- g) assist in developing a framework for continual improvement of environmental performance.

### **5.28 Clarification of Information**

The University reserves the right, in its absolute discretion, to seek clarification of Submissions by making a written request and/or by conducting structured interviews. However, Respondents' Submissions are to be sufficiently detailed to enable short listing by the University without further reference to the Respondent's qualitative capacity and capability. Respondents should not rely on being invited to a structured interview, or further clarification, to present the relevant information.

### **5.29 Confidentiality**

The content of all Submissions will be treated as 'Commercial-in-Confidence'. The University, its employees, officers and agents taking part in the Process will be required to treat all aspects of the tender including verbal as well as written material as confidential.

- 5.29.1 A breach of confidentiality will be considered grounds for elimination of the Process.
- 5.29.2 The successful Respondent may be required to sign a Confidentiality Statement as a condition of the Contract.

### **5.30 Public Disclosure of Contract**

- 5.30.1 The successful Respondent will not use the name of the University for promotional purposes or make any public statements or disclosures in relation to the Request or to the subsequent awarding of any Contract without the prior written permission of the University.
- 5.30.2 Following the award of the Contract the name of the successful contractor will be made publicly available.
- 5.30.3 Limited contract details may be disclosed to unsuccessful respondents only.

### **5.31 Respondent's Conditions**

The respondent must not include as part of their Submission their own standard, general or special conditions of Contract. No Contract awarded in relation to the Request shall include or be deemed to be subject to the successful respondent's standard, general or special conditions of contract, unless specifically incorporated therein by an express term or provision of the Contract.

### **5.32 Conflict of Interest**

5.32.1 The University requires all employees, officers and agents who are involved in the Process to disclose all relevant interests that will or may represent an actual or potential conflict of interest. This declaration is in the form of a signed statement.

5.32.2 The Respondent must disclose any perceived, potential or real conflict of interest in their Submission. Where the University considers that there is perceived, potential or real conflict of interest, the University may, at its sole discretion,

- a) not give the Submission any further consideration; or
- b) require the respondent to overcome its conflict of interest.

### **5.33 Warranties**

5.33.1 Except as set out in the Request and subject to any laws to the contrary, and to the maximum extent permitted by law, all warranties by the University are expressly excluded.

5.33.2 The University their respective employees, officers, and agents will not be liable for any loss or damage suffered by any person acting on any information provided by the University (including information contained in the Request) or by any of its officers, employees, agents and contractors whatsoever.

5.33.3 Where under law, liability cannot be excluded, the liability the University shall be limited to direct loss and without limitation, the University will not be liable for any consequential loss (including loss of profits or loss of opportunity).

### **5.34 Canvassing the University**

5.34.1 If a Respondent, whether personally or by an employee or agent, approaches the University or any of its officers, employees, consultants, contractors and agents in relation to the Process with a view to influencing the acceptance of the Respondent's Submission, or its assessment and ranking, then the University may in its discretion, reject the Submission from the consideration regardless of whether such approach has any influence on the acceptance and ranking or assessment of such Request.

5.34.2 Enquiries as to the appropriateness of Respondent enquiries with the University should be directed to the person whose contact details appear in the 'Contractual Enquiries' section of the Request documentation.