

9 January 2023

INVITATION TO TENDER – T1000087 - CRINGILA HILLS SHARED PATH STAGE 2

Wollongong City Council wishes to engage a contractor for the construction of Stage 2 of Cringila Hills Shared Path within the Cringila Hills Recreation Precinct.

In accordance with section 55 of the *Local Government Act 1993*, Council invites tenders in accordance with this Invitation and the following accompanying documents:

- Form of Tender;
- Specification; and
- Contract (“proposed contract”).

This Invitation to Tender together with the Form of Tender, Specification and proposed contract are collectively referred to as the “Tender Documents”.

1 CLOSE OF TENDERS AND INSTRUCTIONS FOR COMPLETING AND SUBMITTING A TENDER

Close of tenders: **10.00 am on Tuesday 31 January 2023**

Tenders must:

- be submitted in complete form on the attached Form of Tender and be received by Council, in full, before close of tenders, subject to paragraph 7b in relation to hardcopy tenders;
- be submitted in writing in the English language; and
- comply with the *Local Government (General) Regulation 2021* and have regard to the provisions of the NSW Government Code of Practice for Procurement.

Paragraphs 6 to 8 of this Invitation to Tender outline the means by which a tender may be submitted (by electronic means [preferred method], hardcopy, or by facsimile) and the requirements in each case.

IMPORTANT: IF YOU EXPERIENCE DIFFICULTY SUBMITTING A TENDER ELECTRONICALLY

Contact must be made with Council’s Procurement Management Branch on telephone **(02) 4227 8885** with adequate time for the provision of an alternate delivery method to ensure tenders are received by Council in full, *before* the close of tenders.

If tenderers wish to submit a tender the following standard form documents, which are the “formal tender documents” for the purpose of section 170 of the *Local Government (General) Regulation 2021*, must be completed and submitted:

- the Form of Tender; and
- any attachments referred to in the Form of Tender.

2 QUESTIONS AND REQUESTS FOR INFORMATION

All questions and requests for information or clarification concerning the Tender Documents must be directed through the forum in Council’s eTendering portal at: <https://www.tenderlink.com/wollongong>

If tenderers do not have access to the Internet contact should be made with Council’s Procurement Management Branch on telephone (02) 4227 8885.

3 NOT USED

4 NON-COMPLYING OR ALTERNATIVE TENDER

Council reserves the right, in its absolute discretion, to accept a non-complying or alternative tender, ie a tender which:

- does not comply with any requirement specified in this Invitation to Tender, the Form of Tender or the Specification; or
- contains any qualification, condition or other indication that the tenderer is not willing to enter into or perform the proposed contract in strict accordance with the proposed contract; or
- provides innovative solutions or affords some advantage in economy, performance or operating facility to Council.

IMPORTANT NOTE: In order for a non-complying or alternative tender to be considered by Council, a complying tender should also be submitted.

5 CRITERIA FOR ASSESSMENT OF TENDERS

The assessment of tenders will be based upon the following criteria and corresponding weightings –

MANDATORY CRITERIA (Criteria that must be satisfied for a tender to be evaluated)

Referees	Provision of satisfactory references from referees for previous projects of similar size and scope
Financial capacity	Tenderers may be required to provide information required by an independent financial assessment provider engaged by Council. Council will review and determine whether such financial assessment is acceptable to Council and demonstrates the tenderer's financial capacity to undertake the works
Workplace Health & Safety Management system	Tenderers have as a minimum a Health & Safety Policy and WHS Management System Manual or Plan

EVALUATION CRITERIA	Weighting
Cost to Council	35 %
Appreciation of scope of works and construction methodology	20 %
Experience and satisfactory performance in undertaking projects of similar size, scope and risk profile, including staff qualifications and experience	15 %
Proposed sub-contractors	5 %
Project Schedule	5 %
Demonstrated strengthening of local economic capacity	10 %
Workplace health and safety management system	5 %
Environmental management policies and procedures	5 %

Tenderers must include all necessary supporting documentation in the Form of Tender to demonstrate their level of compliance or standing against the assessment criteria.

To assist Council to assess their tender, tenderers may be called upon to submit additional information or to personally discuss their tender by attending an interview with Council's Tender Assessment Panel.

A consultant may be engaged by Council to independently evaluate the technical information supplied with a tender and Council may make its own inquiries in relation to the tenderer's previous performance in undertaking projects of similar size, scope and risk profile or any other matter.

6 ELECTRONIC TENDERS (PREFERRED METHOD)

If tenderers choose to submit a tender electronically, the formal tender documents must:

- be transmitted to Council in PDF format, before the close of tenders, through its eTendering portal at: <https://www.tenderlink.com/wollongong/>
- be submitted in the format as received from Council and may be compressed in a format that can be decompressed by WinZip provided that the tender does not contain self-extracting (*.exe) zip files or zip files that are locked with a password;
- be effected by a secure mechanism (such as encryption-based technology) that ensures it cannot subsequently be altered;
- not include any macros, applets or executable code or files;
- be free from viruses and have been checked with an up-to-date virus-checking program;
- be complete (i.e. contain the completed Form of Tender and any attachments referred to in the Form of Tender); and
- be received by Council before the close of tenders such that the electronic files are able to be accessed and read by authorised users of Council's information system.

Tenderers must not change existing text in the Form of Tender or other tender documents other than in order to insert the required information.

Council may decline to consider or accept any electronically submitted tender which is incomplete or corrupt.

If tenderers have difficulty submitting a tender electronically contact must be made with Council's Procurement Management Branch on telephone (02) 4227 8885 immediately to ensure delivery prior to close of tenders.

7 HARDCOPY TENDERS

If tenderers choose to submit a tender in hardcopy format (without having submitted an electronic tender) the formal tender documents must be signed by the tenderer or by an authorised representative of the tenderer and must be:

- a deposited in Council's Tender Box located in the Customer Service Area on the ground floor of Council's Administration Building, 41 Burelli Street, Wollongong (Tender Box) in a clearly labelled and sealed envelope before the close of tenders; or
- b posted to Council at Locked Bag 8821, Wollongong DC, 2500, in sufficient time to enable the tender to be received by Council before the close of tenders. Council may consider a tender received within such period after the close of tenders as it decides to be reasonable in the circumstances, if the tenderer satisfies the Council that the formal tender documents were posted or lodged at a Post Office or other recognised delivery agency before the close of tenders. Council may also consider a tender received within such period after the close of tenders as it decides to be reasonable in the circumstances if the tenderer satisfies the Council that the formal tender documents were posted or lodged at a Post Office or other recognised delivery agency in sufficient time to enable the documents to have been received by Council in the ordinary course of business before the close of tenders.

8 FACSIMILE TENDERS

If tenderers choose to submit a tender by facsimile, the formal tender documents must be:

- signed by the tenderer or by an authorised representative of the tenderer
- transmitted to Council on facsimile number (02) 4227 7277
- received by Council, in full, before the close of tenders.

Where a tender is sent by facsimile transmission, it will be immediately printed out by officers of Council's Information Management Branch who have been delegated this Council function and placed in a sealed envelope into the Tender Box.

9 THE CONTRACT

In consideration of Council agreeing to consider my/our tender, I/we agree we are contractually bound, in the event that my/our tender is accepted, to enter into the proposed contract with Council forthwith, commence the contract and proceed regularly, diligently and ethically to bring the goods and/or services to the stages of practical completion in accordance with that contract.

Council reserves the right, in its absolute discretion, to amend the proposed contract at any time in order to correct errors or anomalies and to conduct limited negotiations **prior to award** with the successful tenderer in relation to the terms and conditions of the proposed contract to mutually improve outcomes.

The successful tenderer will be required to obtain, and maintain throughout the contract, accreditation with Council's on-line contractor management service provider Conserve at <https://conserve.com.au/>.

10 PROJECT SCHEDULE

The Project Schedule, if required to be provided in the Form of Tender, must be presented so as to enable Council to make an assessment of the proposed sequence of implementation of the proposed contract and the estimated duration and completion time for each phase. For the purpose of preparing a Project Schedule (only), it may be assumed that the proposed contract will commence 28 days after the close of tenders.

11 TENDERER'S UNDERTAKING

An undertaking in accordance with the undertaking in the Form of Tender must be made by a person authorised to make such an undertaking on behalf of the tenderer.

This undertaking is to include an acknowledgement and declaration that the tenderer has not inappropriately contacted any Councillor or member of Council staff, nor offered any inducement to a Councillor or member of Council staff, in relation to the tender.

Tenderers are advised that a tender may be disqualified, or a contract entered into with the successful tenderer may be suspended or terminated, if it is found that the contractor had inappropriately contacted any Councillor or member of Council staff or had engaged in corrupt, collusive or anti-competitive conduct, either during the tender process or after commencement of the contract.

12 CONFLICT OF INTERESTS DECLARATION AND STATEMENT

As part of the undertaking in the Form of Tender a tenderer must declare to Council any actual or potential conflict of interests which may arise in respect of the provision of goods and services under or in connection with the proposed contract.

If a declaration reveals an actual or potential conflict of interests written advice of that conflict of interests together with a statement as to how the conflict would be managed if the tender is accepted by Council must be provided and attached to the Form of Tender.

13 OWNERSHIP OF TENDERS, CONFIDENTIALITY AND LICENSING REQUIREMENTS

Title to all documents, materials, articles and information forming part of a tender submitted to Council is transferred to Council upon submission and becomes a State Record pursuant to the *State Records Act 1998*.

Tenderers must keep confidential, maintain proper and secure custody of and not use or reproduce in any form any information provided by Council as part of the tendering process without the written approval of Council or as required by law.

By submitting a tender a tenderer is licensing Council to use and reproduce the material in the tender for the purpose of assessing the tender.

14 AMENDMENT OF TENDER DOCUMENTS

Council reserves the right to revise or amend the Tender Documents prior to the close of tenders and if this occurs, will take all reasonably practicable steps to inform persons issued with Tender Documents of the amendments by issuing Addenda through Council's eTendering portal at: <https://www.tenderlink.com/wollongong/> .

Tenderers must acknowledge receipt of each Addendum in the Form of Tender.

15 WITHDRAWAL OF TENDER

Tenderers may withdraw their tender at any time before the close of tenders by submitting a further tender with an attached written notice clearly stating that the earlier tender is withdrawn and may substitute the accompanying tender in its place.

16 VARIATION OF TENDER

If tenderers submit a tender and subsequently wish to vary the tender before Council accepts any of the tenders, they may only do so if:

- they are providing Council with further information by way of explanation or clarification or are correcting a mistake or anomaly.
- the variation does not substantially alter the original tender; and
- Council has either requested the variation or has consented to a request for such variation.

17 TENDER CONSTITUTES A BINDING OFFER

By submitting a tender, tenderers are:

- making a binding offer to abide by and hold firm to all of the terms and prices in the tender for a period of 90 calendar days from the close of tenders; and
- undertaking that, in consideration of Council agreeing to consider their tender, agree they are contractually bound, in the event that their tender is accepted, to enter into the proposed contract with Council forthwith, commence the contract and proceed regularly, diligently and ethically in accordance with that contract.

18 ACCEPTANCE OR REJECTION OF TENDERS

After considering the tenders submitted by the close of tenders, Council may:

- accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous to Council (which may or may not be the tender with the lowest cost to Council or, in the case of a tender involving a payment to Council, the highest offer); or
- decline to accept any of the tenders.

In the event that Council decides not to accept any of the tenders it may postpone or cancel the proposal for the contract, invite fresh tenders based on the same or a different specification, enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender, or carry out the requirements of the proposed contract itself.

Tenderers have no claim or action against Council for costs, compensation, damages or losses of any kind, however arising, and including by way of any implied term, in relation to participating in this Invitation to Tender, or a decision of Council in determining this Tender.

19 PUBLIC ACCESS TO TENDER OPENING IMMEDIATELY FOLLOWING CLOSE OF TENDERS

Any person (including tenderers) may attend the opening of tenders and is entitled on request to be informed as to whether Council has received a particular tender and the number of tenders received but is not entitled to receive any other information about the tenders except information ascertained from the list of tenderers prepared and displayed in accordance with sections 175(3) and (4) of the *Local Government (General) Regulation 2021*. A list of tenderers will be displayed on Council's website in accordance with these sections from the Regulation.

The opening of tenders is to be undertaken by the persons designated by the General Manager to receive or deal with tenders, or the General Manager. Persons attending such opening of tenders will be required to observe any safety protocols required by Council in relation to opening documents, envelopes or packages.

This letter is authorised by:

Benjamin Hardaker
Senior Project Manager
Wollongong City Council

Accompanying documents:

- Form of Tender
- Specifications
- Contract (proposed contract)