



MIDCOAST
council

Request for Quotation – 2017-18/02

Project: Gloucester Business Development Consultant

Inquiries to: Deb Tuckerman
deb.tuckerman@midcoast.nsw.gov.au
(02) 6591 7372

Closing Date: 4pm, Wednesday 16 August 2017

Send Quotations to: deb.tuckerman@midcoast.nsw.gov.au

Background:

MidCoast Council (Council) seeks the services of a suitably qualified and experienced Service Provider to undertake a number of projects and programs aimed at furthering economic development opportunities in the Gloucester region (**Services**).

There has been significant work carried out to attract new businesses and residents to Gloucester and to build the Gloucester business community. In the last two years, this work has included the development of an investment prospectus, exhibiting at a Regional Expo in Sydney followed up with a showcase weekend in Gloucester for people considering relocation, undertaking of a Business Retention and Expansion Survey to get a snapshot of the business community and to identify the needs of businesses to grow and be sustainable.

There is an informal Gloucester Economic Development Group which includes MidCoast Council, NSW Department of Premier and Cabinet Office of Regional Development, Gloucester Business Chamber, Destination Gloucester, Advance Gloucester, AGL Trust Fund and at times other stakeholders. The group currently meets on a monthly basis. This group meets to discuss, develop and implement business and economic development initiatives.

The Business Retention and Expansion Survey undertaken in late 2016 resulted in a report which included action plans with implementation currently overseen by this group. The action plans aim to move Gloucester forward and some actions will be undertaken by the Business Development Consultant.

Role of business development consultant:

Council seeks the services of a suitably qualified and experienced consultant to provide the following:

1. Liaison between Council, current businesses and new businesses regarding development application processes and other requirements.
2. Hold discussions with local businesses with regard to the possibilities of load sharing/setting regular timetables with transport companies.
3. Hold discussions with local cafes regarding the possibility of rostering on weekends.
4. Undertake and identify a gap analysis from the BREP survey and other information for the Gloucester region.
5. Review connectivity issues reported by local businesses.
6. Prepare funding submissions as required to further economic development opportunities in the Gloucester area.
7. Follow up potential relocations of businesses to the Gloucester area.
8. Identify and target other businesses for which the Gloucester area has an advantage.
9. Overseeing and supporting implementation of remaining actions from the BREP.
10. Regularly attend and report at the Gloucester ED Group Meetings.
11. Such other services as required by Council and agreed with the Service Provider.

Budget:

The NSW Department of Premier and Cabinet Office of Regional Development has provided funding to MidCoast Council to engage a Business Development Consultant. The total project funding available is \$25,000 (exc GST).

The Service Provider is required to provide a minimum of: 40 days' work (at 7 hours per day), averaged at two days per week over 20 weeks. The Service Provider will be expected to work in Gloucester at least fortnightly, or as negotiated with Council.

Office accommodation can be provided at the Gloucester office of MidCoast Council. An allowance of up to \$2,500 (of the total budget) will be available towards travel and accommodation when visiting businesses or other organisations outside the Gloucester region. The Service Provider will be expected to cover any other costs and provide their own phone, computer and transport. All requests for re-imbursement of expenses must be approved prior to expenses being incurred.

Information to be provided to Council with Quotation:

Please provide the following information with your quotation:

1. Completed Service Provider Declaration (attached);
2. Capability, qualifications and experience in providing business development services (similar to the Services), details of any previous experience with similar work;
3. Capacity to commit to project within the indicative timeframes including the requirement to work from Gloucester as described above and availability to visit businesses outside the Gloucester area;
4. Hourly rate of the Service Provider;
5. Itemise any costs (and associated rates) not covered by the above rates;
6. Insurance details - provide certificates of currency for your existing insurance. Prior to appointment, the successful Service Provider will be required to meet Council's minimum insurance requirements as per the attached Terms of Engagement, including provision of further details regarding insurance policies held. Please consult with Council's Contact Officer if you have any questions about insurance requirements;
7. Two referees which can confirm recent skills and experience in this type of work.

Conditions of Contract:

The successful Service Provider is to enter into an Agreement with Council. The Agreement will consist of a confirmation of engagement, this document, the attached Terms of Engagement for Consultants, and all information submitted as part of the Service Provider's proposal.



Attachment 1: RFQ conditions

1. Submission of Quotations

1.1. Submission of quotations

The deadline for the receipt of quotations **4pm, Wednesday 16 August 2017**

Quotations are to be lodged by email at the following email address:

deb.tuckerman@midcoast.nsw.gov.au

Quotation submissions must include:

- Completion of the Declaration (attached)
- Brief responses to information requested in this RFQ.
- Any other relevant information.

1.2. Required information

Service Providers interested in submitting a quotation must include all information required in this document to be included in their quotations including setting out in their quotation their fee proposal together with any additional disbursements proposed to be claimed.

1.3. Contract agreement

In submitting a quotation in response to this Request for Quotation, the Service Provider:

- will be deemed to be offering to provide Services on terms and conditions set out in this Request for Quotation document, the Service Provider's proposal and any subsequent agreement in writing between the parties (**Contract Terms**); and
- acknowledges and agrees that if it is successful, the Contract Terms comprise the legally binding terms and conditions for the purposes of the Project and the Service Provider agrees to be bound by and comply with the Contract Terms.

A Purchase Order (incorporating the Contract Terms) will be issued to the successful Service Provider prior to commencement of the work.

2. Contract Information

2.1 Preamble

Attention is drawn to the obligations set out in this RFQ to be complied with by Service Providers interested in responding to this Request for Quotation (**RFQ**) including in relation to the preparation and submission of their quotation for this Project (**Quotation**).

Without limiting the above obligations:

- Service Providers must not submit Quotations without a firm intention to proceed (if selected as the successful Service Provider).
- Service Providers must not engage in any form of collusive practice.
- Any Service Provider who directly or indirectly canvasses support from an elected member or servant of the Council and/or NSW Office of Regional Development will be disqualified.

MidCoast Council (**the Principal**) does not guarantee that the information contained in any of these documents is accurate or complete and the Service Provider must make their own assessment as to the validity of the information when preparing the Quotation.

2.2 Service Provider's responsibility

It is the responsibility of the Service Provider to ascertain all information relating to the services that may affect the progress or method of performing all services as specified within the scope of this quotation and to prepare for every contingency that may arise. It is further understood that just provision for these contingencies have been accounted for, implicitly or explicitly within the responses provided to this RFQ.

The Service Provider must provide documentary evidence (as part of its Quotation) to prove they have the necessary capability, experience and capacity to perform the proposed services.



2.3 Closing time

The deadline for the receipt of Quotations **4pm, Wednesday 16 August 2017** – New South Wales time zone, Australia, (Closing Time).

The judgement of the MidCoast Council as to the time a Quotation has been received will be final.

MidCoast Council may, by written notice, extend the Closing Time in its absolute discretion.

Where MidCoast Council extends the Closing Time, the new Closing Time will apply equitably to all making a Quotation.

2.4 Late quotes

Quotations received after the Closing Time will not be accepted unless there has clearly been a mishandling of the Quotation by MidCoast Council.

Lodgement of Quotation so as to be received by the Closing Time is entirely the Service Provider's responsibility.

2.5 Quote validity period

A Quotation must remain open for acceptance for at least 90 days from the Closing Time. In the event of the withdrawal of the Quotation prior to the expiration of this period, the Service Provider shall be liable for all costs, losses or damages suffered by the Principal by reason of that withdrawal

3. Quotation Assessment

3.1 Assessment timetable

The following indicative timeframes will apply to the evaluation of Quotations and selection of the successful Service Provider:

Distribution of RFQ	19 July 2017
Submissions Close	4pm 2 August 2017
Commencement of Services	As soon as possible - to be agreed between the parties

3.2 Assessment criteria

Quotations will be assessed against the following criteria (in no particular order):

- Capability, experience, capacity and quality of the Service Provider
- Availability (having regard to the indicative timeframe)
- Price (hourly rate quoted)

MidCoast Council will assess Quotations to identify the offer that it considers best represents **overall value for money** and is fully capable of meeting MidCoast Council's requirements for the Project.

Value for money is a comprehensive assessment that takes into account both cost represented by the assessment of price and value represented by technical worth assessment in the context of the risk profile presented by each Quotation.

Service Providers are required to provide access to any information MidCoast Council considers reasonably necessary in order to evaluate their Quotation.

3.3 Evaluation governance

The evaluation will use the following evaluation methodology:

- a) each Quotation will be examined and evaluated against the same Evaluation Criteria;
- b) Quotations which, in the opinion of MidCoast Council, meet the requirements to a greater degree may be shortlisted for further evaluation;
- c) the evaluation committee will make a recommendation concerning the preferred Service Provider

The evaluation committee may require shortlisted Service Providers to participate in an interview in Gloucester as part of the evaluation process.

The evaluation committee may seek clarification from, and enter into discussion with any or all the Service Providers in relation to their Quotations.



The evaluation committee may seek additional information in respect of any aspect of a Quotation at any time.

The evaluation committee is not under any obligation to take into account additional information provided by Service Providers and will not do so where that would introduce unfairness into the evaluation process.

It is permissible for the evaluation committee during evaluation phases to clarify any errors of form, such as technical omissions, ambiguities and anomalies, in a Quotation with the Service Providers. However, this will not extend to a substantial re-tailoring of the Quotation.

A short-listing process may occur in which MidCoast Council may, at its absolute discretion, exclude a Quotation from further consideration at any stage of the process if:

- a) it is found not to comply with the terms and conditions of the Quotation process;
- b) it is evaluated as not meeting or addressing a criteria;
- c) if it is found to be unacceptable in terms of effectiveness against the evaluation criteria;
- d) it is evaluated as representing a greater than acceptable price;
- e) it is found to be presenting unacceptable risk; or
- f) it is evaluated as not achieving a satisfactory standard.

MidCoast Council will not necessarily accept any Quotation.

All final selection decisions will be made by MidCoast Council having regard to the evaluation committee's recommendations and any other matter MidCoast Council considers relevant.

All Service Providers will be informed in writing of the outcome of their Quotation at the conclusion of the process.

Unsuccessful Service Providers may request in writing:

- a) a statement of the reasons their Quotation was unsuccessful; and
- b) an opportunity to be debriefed.

The content and/or format of any statement or debriefing is at MidCoast Council's absolute discretion.

3.4 Referee check

It is at the discretion of MidCoast Council to contact the identified referees. The referees may be asked a series of questions relating to the technical worth of the service provider to assist with the evaluation.

3.5 Contract negotiations

MidCoast Council may select any number of Service Providers with whom it will negotiate with a view to selecting a Service Provider.

During those negotiations MidCoast Council may seek variations to a Quotation or seek supplementary information, to address any variation which will improve value for money.

MidCoast Council will not consider variations to the Conditions of Contract submitted in a Quotation, unless such variations improve value for money.



Attachment 2: Terms of Engagement for Consultants



(Edition 5a; January 2012) ©

Contents:

1. Interpretations
2. Governing law
3. Statutory and other requirements
4. Principal's obligations
5. Relationship with the Principal
6. Directions and variations
7. Discrepancies in information
8. Subcontracting or assignment
9. Conflict of interest
10. Standard of care
11. Personnel
12. Reports and information
13. Delays and extensions of time
14. Payment
15. Termination
16. Confidentiality and privacy
17. Intellectual Property
18. Indemnity
19. Insurance
20. Safety Management
21. Disputes
22. Waiver
23. Surviving obligations

The Contracts Panel of the Hunter Region Organisation of Councils in association with Gosford City Council



Hunter Councils Terms of Engagement for Consultants

1. Interpretation

1.1 In these Terms of Engagement for Consultants (**Conditions**) unless the context otherwise requires:

“Agreement” (or **“Contract”**) means the written agreement between the Principal and the Service Provider, dated, together with the documents referred there to in;

“Contract Sum” (or **“Service Fee”**) means the sum agreed in writing between the Service Provider and Council at the commencement of the Contract’ ;

~~**“Contract Term”** means the initial term of the Agreement and any period for which the operation of the Agreement is extended;~~

“Day” means business day, that is not Saturday or Sunday or public holiday for the Principal’s employees;

“Information” means all information, including documents or data however held, stored or recorded, drawings, plans, specifications, calculations, reports, models, concepts, source codes, files, computerised data, or photographic recordings, audio or audio visual recordings;

“Intellectual Property” includes all proprietary rights in relation to Information including copyright and neighbouring rights and all proprietary rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields as defined in *Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967*.

“Moral Rights” means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute that exist, or may come to exist, in the Agreement.

“Principal” means the Council;

“Principal’s Representative” means the person appointed by the Principal for the management of the Agreement;

“Service” means the obligations to be performed by the Service Provider in accordance with the Agreement and includes, but is not limited to, the provision of professional services, the supply of any materials related to these services and all other things required to be carried out by the Agreement;

“Service Provider” (or **“Consultant”**) means the person bound to carry out and complete the Service and includes his executors, administrators, successors and permitted assigns of that party;

1.2 In these Conditions and any Agreement, unless a contrary intention appears, a reference to:

- (a) a person includes an individual, a corporation, partnership, joint venture, governments, local government authorities and agencies;
- (b) a Special Condition of Contract, Schedule or Annexure is a reference to a Special Condition of Contract, Schedule or Annexure to the Contract and each of them forms part of the Agreement;
- (c) a party to the Agreement includes the executors, administrators, successors and permitted assigns of that party.

1.3 In these Conditions clause headings are for convenience of reference only and have no effect in limiting or extending the language of the provisions to which they refer.

1.4 If a party to the Agreement consists of more than one person, those persons shall be bound jointly and severally.

1.5 Except as provided at law or elsewhere in the Agreement, none of the terms of the Agreement shall be varied, waived, discharged or released except with the prior written consent of the Principal.

2. Governing law

The Agreement shall be subject to and construed in accordance with the laws, Acts and other prescribed rules applying in the State of New South Wales.

3. Statutory and other requirements

The Service Provider must comply with the requirements of all legislation of the Parliament of New South Wales and the Parliament of the Commonwealth of Australia, all relevant Australian Standards and with the lawful requirements of public and other authorities in any way affecting or applicable to the performance of its obligations.

4. Principal’s obligations

The Principal, through the Principal’s Representative must give to the Service Provider timely directions, instructions, decisions and information including any approvals the Principal is required to obtain. These directions, instructions, decision and information must be confirmed in writing.

5. Relationship with Principal

The Service Provider must not act outside the scope of the authority conferred on it by this Agreement.



The Service Provider must take upon itself the whole risk of performing its obligations under the Agreement. The Service Provider must also comply with every and all reasonable and lawful direction of the Principal's Representative.

The Service Provider must use all reasonable efforts to inform itself of the requirements of the Principal and must regularly liaise with the Principal's Representative on progress and outcomes during the term of the Agreement.

The Service Provider, shall have the status of an independent contractor and is not an employee of the Principal. The Service Provider shall not be entitled to any benefits that might apply to an employee of the Principal and shall be responsible for any legal entitlements relating to worker's compensation, payroll tax and superannuation.

6. Directions and variations

Unless otherwise provided, any notice to be given may be given by hand, facsimile, e-mail, or by pre-paid post addressed to the Principal or Service Provider at its stated address.

The Principal may, by written notice, direct the Service Provider to vary the Service. Any variation in the fee payable to the Service Provider as a consequence of a direction issued under this Clause shall be agreed between the Principal and the Service Provider.

Unless otherwise agreed, the value of a variation shall be determined using the service rates and expenses which form the basis of the Contract Sum. If the Contract Sum is a lump sum, then reasonable rates and expenses shall apply.

7. Discrepancies in information

The Service Provider must as soon as practicable give written notice to the Principal's Representative if information and particulars made available to it are inadequate or contain errors.

8. Subcontracting or assignment

The Service Provider must not without the prior written approval of the Principal's Representative subcontract or assign any performance of rights or obligations under the Agreement. In giving approval the Principal may impose such terms and conditions as deemed necessary.

9. Conflict of interest

The Service Provider warrants that it does not hold any office or possess any property, is not engaged in any business, trade or calling and does not have any obligations by virtue of any contract or any family relationship whereby, directly or indirectly, duties or interests are or might be created in conflict with or might appear to be created in conflict with its duties and interests under this Agreement.

The Service Provider must inform the Principal of any matter which may give rise to an actual or potential conflict of interest at any time during the term or the duration and any extension beyond the term of the Agreement and the Principal may regard a conflict of interest as a breach of a fundamental term of the Agreement and may elect to terminate the Agreement

10. Standard of care

The Service Provider must perform all its obligations required by the Agreement in a diligent manner and to the standard of skill and care expected of a competent Service Provider.

The Principal reserves the right to qualify or not accept any conclusions or recommendations made by the Service Provider under this Agreement.

11. Personnel

The Service Provider warrants that all personnel engaged by it are appropriately qualified, competent and experienced in the provision of the type of activities connected with the Agreement.

The Service Provider shall reasonably ensure that the personnel nominated in their submission are engaged throughout the entire period of the Agreement.

The Principal may direct the Service Provider to immediately and permanently remove from any activity connected with the Agreement any person who in the opinion of the Principal's Representative is incompetent, negligent or otherwise unacceptable.

12. Reports and information

The Service Provider must provide the Principal's Representative with written reports or information on any aspects of the Agreement when requested.

Any Information that is produced or reproduced in an electronic format, the consultant must deliver it to the Principal in a format approved by the Principal.

13. Delays and extension of time

The Service Provider shall proceed with the work under the Agreement with due expedition and without delay. When it becomes evident to a party that anything, including an act or omission by another party, may delay carrying out the Service, that party shall notify the other party as soon as practical in writing with details of the possible delay and the cause.

If the Service Provider is or will be delayed in carrying out the Service by a cause beyond the reasonable control of the Service Provider, the time for carrying out the Service shall be extended by the extent of the delay.



The Principal may, at any time, by written notice to the Service Provider extend the time for carrying out the Service for any reason.

Nothing in this Clause shall:

- (a) oblige the Principal to pay extra costs for delay or disruption which have already been included in the value of a variation or any other payment under the Agreement; or
- (b) limit the Principal's liability for damages for breach of the Agreement.

14. Payment

14.1 ~~Costs, Fees and Expenses~~

~~The Contract Sum (or Service Fee) is inclusive of all expenses of the Service Provider, including fees, disbursements, provisional sums and taxes, all of which shall be paid by the Service Provider. Unless otherwise provided, no payment will be made for travelling in relation to the Service.~~

~~Fees and expenses shall not be subject to price variation (rise & fall) unless otherwise provided in the Agreement.~~

14.2 Claims for Payment

The Service Provider must provide the Principal's Representative with a payment claim in the form of a valid tax invoice or adjustment note, in respect of the Service performed and accepted.

If the Service Provider fails to provide an ABN on any tax invoice or adjustment note, the Principal may be required to withhold from the payment an amount of tax calculated in accordance with the relevant taxation act or regulation.

14.3 Time for Payment

The Principal shall pay to the Service Provider the invoiced amount within 25 Days of the receipt of a payment claim if the claim is certified by the Principal's Representative as being correct.

14.4 Disputed Claims

If the Principal's Representative disputes the payment claim amount, the amount the Principal's Representative believes is due for payment shall be paid by the Principal and the liability for payment of the balance of the amount shall be determined in accordance with the provisions of the Agreement.

14.5 Payments on Account

Any payment is not evidence of any value or an admission of liability or that the Service is satisfactory but is a payment on account only; nor shall it amount to a waiver of any right or action, which the Principal may have at any time against the Service Provider.

15. Termination

15.1 Termination by the Principal – Default of the Service Provider

Without prejudice to any other rights, the Principal reserves the right to terminate the Agreement

- (a) if the Service Provider commits a substantial breach of the Agreement, including:
 - (i) failure to carry out the Agreement at all, or within the time specified, or at a reasonable quality.
 - (ii) failure to carry out a reasonable direction of the Principal's Representative
- (b) if the Service Provider becomes bankrupt or makes any arrangements with its creditors or being a Company which goes into liquidation or has a receiver or administrator appointed.

The Principal's Representative must in writing specify the breach and ask the Service Provider to give reasons why the Principal should not take further action. The Service Provider must respond within 5 Days of receiving the notice and if it fails to respond, the Principal's Representative may immediately refuse acceptance of the Service, decline to accept any further Service, take over the uncompleted Service, suspend payments due and have the Agreement completed by others; or immediately terminate the Agreement in writing by itself or through the Principal's Representative

Termination by the Principal will not release the Service Provider from liability in respect of any obligation relating to this Agreement. Any shortfall in costs whatsoever shall be a debt due from the Service Provider to the Principal.

15.2 Termination – Frustration, Convenience

The Agreement may be terminated at any time by mutual agreement or if, under the law governing the Agreement, the Agreement is frustrated. Furthermore the Principal may, for its convenience and without the need to give reasons, also terminate the Agreement at any time. In which ever case, the Principal must give a written notice to the Service Provider. The Service Provider must, on receipt of such notice, immediately cease all activities under the Agreement and take all appropriate action to mitigate any loss or prevent further costs being incurred. The Principal must pay the reasonable fees and expenses of the Service Provider for the extent of the Service performed based upon agreed service rates to the earlier of:

- (a) the date of cessation; or
- (b) the date that the Service Provider was required to cease work.

In no circumstances must the Contract Sum payable for the terminated Service include any loss of prospective profits or exceed the Contract Sum that would have been paid had the Agreement been completed.



15.3 Termination by the Service Provider

If the Principal fails to:

- (a) pay the Service Provider in accordance with this Agreement; or
- (b) issue instructions required.

The Service Provider must in writing specify the breach and ask the Principal to give reasons why the Service Provider should not take further action. The Principal must respond within 5 Days of receiving the notice and if it fails to respond the Service Provider may terminate the Agreement.

16. Confidentiality and privacy

The Service Provider its employees, agents, directors, partners, shareholders or consultants must not disclose to any third party, any Information including by way of media interviews or releases relating to the Principal or the affairs of others which may have come to its or their knowledge as a result of the Agreement.

The Service Provider shall not issue any Information, publication, document or article for publication concerning any aspect of the Agreement in any media without prior approval of the Principal, which approval shall not be unreasonably withheld. The Service Provider shall refer to the Principal any enquiries concerning any aspect of the Agreement from any media.

The Service Provider agrees to comply with the provisions of the Privacy & Personal Information Protection Act 1998, as if it were included in the definition of 'public sector agency' under that Act, the Privacy Code of Practice for Local Government and the Principal's Privacy Management Plan.

17. Intellectual Property

The Service Provider warrants that it is entitled to use any Intellectual Property which may be used by it in connection with this Agreement. The Service Provider indemnifies and must at all times keep the Principal indemnified against any action, claim, suit or demand, including a claim, suit or demand for or liability to pay compensation or damages and costs or expenses arising out of or in respect of any breach of any third party's Intellectual Property rights relating to the scope of activities under the Agreement.

The Service Provider grants to the Principal a non-exclusive licence to use the Service Provider's Intellectual Property rights in relation to the Service and must execute an agreement giving effect to this sub-clause if requested by the Principal's Representative.

The ownership of all Intellectual Property in all Information created under this Agreement shall vest with the Principal. The Service Provider must assign ownership of all Intellectual Property rights to the Principal and will ensure that its employees, subcontractors and agents execute all documents necessary to assign such rights to the Principal.

To the extent permitted by law, if the Service Provider is the owner of the Moral Rights in the Intellectual Property referred to in this clause, the Service Provider unconditionally and irrevocably:

- (a) Consents to any act or omission that would otherwise infringe its Moral Rights in that Intellectual Property, including any act or omission that may have taken place before this consent,
- (b) Waives all of its Moral Rights in that Intellectual Property,

for the benefit of the Principal, its licensees, successors in title and anyone authorised by any of them to do acts permitted under the terms of this Agreement.

18. Indemnity

The Service Provider indemnifies the Principal, its servants and agents from and against all actions, claims, losses, damages, penalties, demands or costs whatsoever which may be brought or made against it or them by any person in respect of or by reason of or arising out of the performance by the Service Provider of the Agreement including:

- (a) any negligence, wrongful act or omission of the Service Provider or of any other persons for whose acts or omissions the Service Provider is liable; and/or
- (b) death or injury to any person or loss of or damage to any property; and/or
- (c) any breach of a third party's Intellectual Property Rights; and/or
- (d) any breach of the Agreement by the Service Provider; and/or
- (e) any action, claim or demand from liability brought against the Principal in connection with a breach by the Service Provider of the WH&S Act and associated legislation (so far as it is permissible at law).

The Service Provider's liability to indemnify the Principal is reduced proportionally to the extent that an action or omission of the Principal or employees or agents (other than the Service Provider) of the Principal may have contributed to the injury, damage or loss.

19. Insurance

~~Before commencing the Agreement, the Service Provider must effect and maintain the insurance policies nominated in the "Schedule – Insurances". The Service Provider must ensure that all sub-consultants are similarly insured. The Principal's Representative may at any time require proof that these insurances have been effected and are being maintained.~~



~~The Service Provider must keep current during the contract term, policies of insurances stated in the *Schedule – Insurances*:~~

- ~~(a) public liability in respect of any one occurrence, \$10,000,000 but unlimited in the aggregate;~~
- ~~(b) Accident insurance – Complying with the *Workers Compensation Act 1987*. Alternatively, where the Service Provider has no employees, insurance for personal accident and illness providing:
 - ~~(i) Weekly benefits of at least 75% of weekly income;~~
 - ~~(ii) Death benefits of at least \$250,000;~~
 - ~~(iii) Minimum benefit period of 24 months.~~~~
- ~~(c) professional indemnity insurance – a limit for any one claim of \$10,000,000 unless otherwise stated by the Principal.~~

20. Safety management

The Service Provider must comply with the current WH&S legislation and the Principal's Site safety requirements. If the Service involves any Site work or the use of major equipment, then the Principal's Safety Management requirements shall apply.

21. Disputes

In the event of any dispute arising between the Principal and the Service Provider that cannot be resolved by negotiation, the Principal shall nominate a formal dispute resolution process to be followed by the parties. The Service Provider must continue to perform its obligations under the Agreement notwithstanding the existence of a dispute.

22. Waiver

A waiver by either party in respect of any breach of a condition or provision of this Agreement shall not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision. The failure of either party to enforce at any time any of the provisions of this Agreement shall in no way be interpreted as a waiver of such provision.

23. Surviving obligations

The obligations of the Service Provider under the Clauses on *Confidentiality & Privacy, Intellectual Property, Indemnity and Insurance* shall be of a continuing nature and shall survive the termination or expiration of this Agreement.

Note: Variations to standard Terms of Engagement

Despite any other provision of this agreement, the following variations shall be made (and take precedence in the event of any inconsistency with any other term in the agreement)

Clause 1.1 (definition of 'Contract Sum') and Clause 14.1 are deleted and replaced with the following:

Clause 1.1 'Contract Sum (or Service Fee) means the fees in Australian dollars set out or calculated in accordance the Service Provider's quotation (as otherwise varied by agreement in writing between the parties).

Clause 14.1

The Contract Sum (or Service Fee) payable to the Service Provider is calculated based on the fees (as approved by the Principal) set out in the Service Provider's quotation (or as otherwise agreed between the parties in writing). Any additional fees, disbursements (including travel expenses), provisional sums and taxes will be paid on an as incurred basis in accordance with the Service Provider's quotation (or as otherwise agreed between the parties in writing).

Fees and expenses are not to be subject to price variation unless otherwise provided in the Agreement.

Clause 19 is deleted and replaced with the following:

19. Insurance

Without limiting the Service Provider's obligations under this Agreement, the Service Provider will take out and maintain with a reputable insurance company the following insurance policies:

Insurance of Employees

Workers Compensation Insurance against any death of or injury to persons employed by the Service Provider as required by the Workers Compensation Act 1987. Alternatively where the Service Provider has no employees and in lieu of Workers Compensation Insurance, Insurance for personal accident and illness under a policy that provides



weekly benefits of at least 75% of weekly income, death and capital benefits of at least \$250,000, and minimum benefit period of 104 weeks.

To be submitted by Service Provider:

The Service Provider is to submit a copy of the Certificate of Currency.

Public Liability

Insurance against the death or injury to any third party or parties or loss of or damage to any property including loss of use of property whether it is damaged or not whatsoever caused during the course of the contract. The policy shall have a limit of indemnity of not less than \$20 million for any one occurrence. Council's interests should be noted on the Policy where possible.

To be submitted by Service Provider:

The Service Provider is to submit / provide:

- A copy of the Certificate of Currency; and
- Advice as to any 'Exclusions' from the Policy which could affect the Service Provider's insurance under this contract.

Professional Indemnity Insurance

The policy is to cover the Service Provider for liability to the Principal for a minimum indemnity amount of \$10 million any one claim and in the aggregate from errors or omissions in the works carried out by the Service Provider under the contract. Council's interests should be noted on the Policy where possible. The policy is required to provide cover for seven years following completion of the contract.

To be submitted by Service Provider:

The Service Provider is to submit / provide:

- A copy of the Certificate of Currency; and
- Advice as to any 'Exclusions' from the Policy which could affect the Service Provider's insurance under this contract.

Motor Vehicle Insurance

The following insurance shall be held for any motor vehicle used in the performance of the contract.

1. A comprehensive Motor Vehicle Insurance Policy. The policy shall be for a sum not less than the full market value of the vehicle and shall include insurance against loss of or damage to any property whatsoever caused by the use of the vehicle when being driven by the Service Provider, its employees or any person not employed by the Service Provider. The policy shall have a limit of indemnity of not less than \$20million; and
2. Insurance against any injury to any third party or parties under a Compulsory Third Party Insurance as required by the NSW Motor Accidents Act 1988.

To be submitted by Service Provider:

The Service Provider is to submit a copy of the Certificate of Currency and any other relevant documentation evidencing insurance for any motor vehicles to be used during the course of the contract.

The Service Provider is responsible to ensure that any contractors/consultants undertaking work on their behalf in relation to this project also hold the above insurance and the Service Provider must provide evidence of such insurance if requested by the Principal.

End of document



Attachment 3: Declaration

Project: Gloucester Business Development Consultant

Service Provider

(full legal name eg XYZ Pty Ltd)

ACN: _____

ABN: _____

Contact Person: _____

Title: _____

Registered Office Address: _____

Principal Business Address: _____

Telephone: _____

Facsimile: _____

Email: _____

Note: If the Service Provider is acting in the capacity as Trustee of a Trust, then a full copy of the trust deed MUST be submitted with the quotation.

The Service Provider named above, hereby offers to provide Services in accordance with the Request for Quotation document entitled "Gloucester Business Development Consultant", the Service Provider's proposal and any subsequent agreement in writing between the parties (**Contract Terms**).

The Service Provider also acknowledges and agrees that if it is successful, the Contract Terms comprise the legally binding terms and conditions for the purposes of the Project and the Service Provider agrees to be bound by and comply with the Contract Terms.

The Service Provider warrants and represents that:

- (a) it has fully acquainted itself with all of the documents referred to in the Quotation document and all matters relating thereto
- (b) all of the information provided in its proposal is true and correct
- (c) it has made its own enquiries and investigations and has obtained professional advice and all other relevant information so as to inform itself of all risks and contingencies which may affect its quoted price
- (d) it has allowed for all such risks and contingencies in its quoted price
- (e) it has read, understood and agree to comply with the Terms of Engagement of Consultants and the requirements of Council's adopted Statement of Business Ethics (ref council website or by inquiring with contact officer).

Conflicts of Interest

The Service Provider must confirm whether there exists any interests, relationships (including those of family members and employees) or clients that may or do give rise to a conflict of interest:

Yes **No**

If "Yes", as an attachment to this declaration, the Service Provider must detail the area in which that conflict or potential conflict does or may arise and provide details of strategies for appropriately managing that conflict and preventing any further conflicts of interest.

Signed for and on behalf of the Service Provider by its Authorised Person who confirms they have the authority to bind the Service Provider to this agreement and in the presence of a Witness.

Service Provider	Authorised Person	Witness
Name:		
Position:		
Signature:	X	X
Date		

