



**SOUTH BURNETT**  
**REGIONAL COUNCIL**

**S2 - Invitation to Offer**

Non-Returnable Schedule

Contract No. SBRCQ-20/21-127

for

Provide services to Operate the Proston Swimming Pool



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## 1. Background and General Information

Quotes are being called for the provision of the services of managing the Proston Swimming Pool, located on Proston State School Grounds at Collingwood Street, Proston. This pool is utilised as both a School and Community resource. The pool is open to the public outside of school hours and its use is reserved for the school during school hours. It is expected that the Pool Management Entity will work closely with school representatives ensuring a seamless collaborative approach in utilising the facility.

## 2. Agreement to be bound by Invitation to Offer

In consideration of Council:

- (a) inviting the Respondent to submit an Offer for the goods, services and/or works, as applicable, as described in clause 1 and more particularly described in the Scope and Specification; and
- (b) agreeing to evaluate each Offer submitted by the Respondent in accordance with this Invitation to Offer, the Respondent agrees to be bound by this Invitation to Offer for each Offer submitted by the Respondent.

## 3. Definitions

- (a) This Invitation to Offer uses definitions, some of which are found elsewhere in the Offer Documents. Respondents should note the following defined terms:

Term	Definition
<b>Addenda or Addendum</b>	means any document issued by Council pursuant to clause 7 of this Invitation to Offer.
<b>Business Day</b>	means a day other than a Saturday, Sunday or a public holiday in the South Burnett, Queensland.
<b>Closing Date for Enquiries</b>	means the date and time specified in clause 5 of this Invitation to Offer or such other date as may be determined by Council.
<b>Closing Time</b>	means the date and time specified in clause 5 of this Invitation to Offer or such other date as may be determined by Council in accordance with clause 14.3(c)(ii).
<b>Conforming Offer</b>	means an Offer that complies with clause 13.1.
<b>Council</b>	means South Burnett Regional Council and includes where relevant any of its Personnel.
<b>E-Procurement Platforms</b>	means the e-procurement tools and platforms used by Council for this Invitation to Offer.
<b>Legislative Requirements</b>	includes: <ol style="list-style-type: none"><li>(a) acts, regulations, by-laws, ordinances, orders, awards and proclamations of the Commonwealth, the State or Territory or of the local government in which the Supply or any part thereof is being carried out;</li><li>(b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Supply; and</li><li>(c) fees and charges payable in connection with the foregoing.</li></ol>
<b>Non-Conforming Offer</b>	means an Offer that complies with clause 13.2 is not a Conforming Offer.
<b>Non-Returnable Schedule</b>	means any Schedule marked 'Non-Returnable Schedule'. For the avoidance of doubt, the Respondent is not required to complete or submit Non-Returnable Schedules with its Offer.
<b>Offer</b>	means any offer submitted by a Respondent in accordance with this Invitation to Offer and may include a Non-Conforming Offer.
<b>Offer Documents</b>	has the meaning given to it in clause 6 of this Invitation to Offer and, without limitation, includes this Invitation to Offer.
<b>Personal Information</b>	has the meaning given to it in the <i>Information Privacy Act 2009</i> (Qld). A non-exhaustive list of examples of Personal Information are: <ol style="list-style-type: none"><li>(a) a person's name, age, address, phone number or email address;</li><li>(b) a person's signature; or</li><li>(c) a person's salary, bank account or financial details.</li></ol>
<b>Personnel</b>	has the meaning given to it in clause 23.5 of this Invitation to Offer.

<b>Term</b>	<b>Definition</b>
<b>Policies and Plans</b>	means Council's published or to be published policies and plans which may be amended from time to time, including those published on <a href="http://www.southburnett.qld.gov.au">www.southburnett.qld.gov.au</a>
<b>Pricing Schedule</b>	means the schedule (in the form set out in Returnable Schedule 2) to be completed by the Respondent which specifies the amount of money for which the Respondent offers to carry out the Supply.
<b>Procurement Process</b>	means any process carried out by Council relating to the subject of this Invitation to Offer, including this Invitation to Offer, the evaluation of Offers and may also include, without limitation, an expression of interest process, a tender process or a 'best and final offer' process.
<b>Respondent</b>	means the person, company or other entity that submits an Offer.
<b>Returnable Schedule</b>	means any Schedule marked 'Returnable Schedules' which must be completed by the Respondent and submitted with its Offer.
<b>Schedules</b>	means any schedules attached to this Invitation to Offer, including Returnable Schedules and Non-Returnable Schedule.
<b>Scope and Specification</b>	means the document created by or on behalf of Council and included in the Offer Documents as Non-Returnable Schedule 1, setting out the Supply which may be required to be carried out by the successful Respondent.
<b>Site</b>	means the site or sites at which the Supply is to be carried out.
<b>Supply</b>	means the goods, services and/or works, as applicable, that: (a) the shortlisted Respondent(s) may be invited to tender for by Council; or (b) are being procured pursuant to this Invitation to Offer, as described in clause 1 and more particularly described in the Scope and Specification.

(b) Other terms may be defined in the text of the Offer Documents.

#### **4. Interpretation**

In this Invitation to Offer:

- (a) the singular includes the plural and vice versa and a gender includes other genders;
- (b) a reference to a party is to be construed as a reference to a party to this Invitation to Offer and includes its successors and permitted assigns;
- (c) a reference to an item in a clause, schedule, annexure or appendix is a reference to an item in the clause or schedule, annexure or appendix to this Invitation to Offer and references to this Invitation to Offer include its schedules and any annexures;
- (d) where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- (e) a reference to a document or agreement including this Invitation to Offer includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (f) in the interpretation of this Invitation to Offer, headings are to be disregarded;
- (g) no rule of construction or interpretation applies to the construction or interpretation of this Invitation to Offer to the disadvantage of Council on the basis that Council prepared this Invitation to Offer or any part of it;
- (h) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it; and
- (i) the words 'including' and 'includes' and any variants of those words, will be read as if followed by the words 'without limitation'.

## 5. Timetable

The following timetable is indicative only and may be amended at any time in the absolute discretion of Council:

Action	Time / Date
Invitation to Offer released / Date of advertisement	4 <sup>th</sup> March 2021
Platform used	Council Website, Facebook and South Burnett Today
Closing Date for Enquiries	[4.00 pm (Australian Eastern Standard Time) on Wednesday 24 <sup>th</sup> March 2021
Submission of Documents	<a href="mailto:info@sbrc.qld.gov.au">info@sbrc.qld.gov.au</a> Attention: Natalee Taylor
Contact Officer	Natalee Taylor Property Management Officer 4189 9100 natalee.taylor@sbrc.qld.gov.au
Closing Time	2.00 pm (Australian Eastern Standard Time) on Friday 25 <sup>th</sup> March 2021
Respondent interviews	Mandatory <input type="checkbox"/> Non-mandatory <input type="checkbox"/> If Respondent interviews are 'Mandatory', the time(s) and location(s) for such interview will be nominated by Council in accordance with clause 17.2.

## 6. Offer Documents

The Offer Documents are:

- (a) this Invitation to Offer and its Schedule/s;
- (b) Scope and Specification; and
- (c) any Addenda issued pursuant to clause 7.

## 7. Modification and or clarification of the Offer Documents (Addenda)

- (a) Council may at any time prior to the Closing Date for Enquiries modify or clarify any provision or part of the Offer Documents by:
  - (i) uploading a written Addendum to the E-Procurement Platform; or
  - (ii) issuing a written Addendum by mail, facsimile or email to all Respondents.
- (b) If Council issues an Addendum, Respondents must take the information into account in the preparation of its Offer.

## 8. Enquiries

- (a) Any enquiries by Respondents are to be emailed to [natalee.taylor@sbrc.qld.gov.au](mailto:natalee.taylor@sbrc.qld.gov.au)
- (b) Council will use reasonable endeavours to respond to queries, comments or questions.
- (c) Without limiting clause 8(b), Council will not respond to any enquiries after the Closing Date for Enquiries.
- (d) Without limiting any other part of this Invitation to Offer, Council will not be bound by any advice given or not given, or information furnished or not furnished (whether in writing or verbally), by any officer or consultant of Council, nor in the event that any advice or information is inaccurate, out of date or incomplete in respect of the Supply, the Offer or the Procurement Process.
- (e) Council may, at its discretion, provide feedback to both successful and unsuccessful Respondents, but is under no obligation to do so.

- (f) Respondents must not direct requests for information to, or seek to discuss the Procurement Process with, any Councillor or officer of Council and Council will not be bound by any advice or information furnished by a Councillor or Council officer with respect to the Offer.

## **9. Lodgement of Offers**

### **9.1 Electronic submission**

- (a) Offers must be submitted electronically to [info@sbrc.qld.gov.au](mailto:info@sbrc.qld.gov.au) Attention: Natalee Taylor
- (b) Respondents should allow sufficient time for lodgement of their Offers, including time that may be required for any problem troubleshooting and resolution prior to the Closing Time.

### **9.2 Opening of Offers**

- (a) Subject to clause 9.2(b), there will be a public opening of Offers.
- (b) Council will only disclose the names of the Respondents who have submitted an Offer by the Closing Time during the public opening of Offers and will not, for the avoidance of doubt, be bound to communicate and/or advertise the value of Offers of any Respondent during public openings.

### **9.3 No representation**

Any letter or other form of written or oral acknowledgment by Council of receipt of the Offer does not imply that the Offer has been admitted or accepted as a Conforming Offer or a Non-Conforming Offer and nor does it constitute any representation by Council as to any other matter.

## **10. Offer validity period**

Any Offer lodged remains valid and binding upon the Respondent for a period of 90 Business Days from the Closing Time and then remains available for acceptance until withdrawn by the Respondent or Council concludes the procurement process.

## **11. Late Offers**

Offers lodged with or received by Council after the Closing Time are deemed to be late and will be opened and registered separately. Council may, but is not bound to, consider or evaluate a late offer.

## **12. Offer requirements**

### **12.1 Documents to be submitted with Offers**

In their Offers, Respondents must provide all information required by the Offer Documents, including:

- (a) a completed schedule of the Respondent's details (Returnable Schedule 1);
- (b) subject to clause 12.2, a completed Pricing Schedule (Returnable Schedule 2);
- (c) a completed schedule of the Respondent's Certificates of Insurances (Returnable Schedule 3);
- (d) any information set out and required in this Invitation to Offer and the Returnable Schedules; and
- (e) any other information required by the Offer Documents.

### **12.2 Offer price**

If this Invitation to Offer is not for an expression of interest process, the amount of money which the Respondent offers to carry out the Supply must be included in the Pricing Schedule and the completed schedule of the Respondent's details (Returnable Schedule 1). All amounts must be exclusive of GST and in Australian Dollars.

## **13. Conforming Offer**

### **13.1 Conforming Offer**

To be considered to be a Conforming Offer, an Offer must:

- (a) contain all the documents and information described in clause 12.1
- (b) strictly comply with the Scope and Specification with no departures; and
- (c) in all other respects comply with this Invitation to Offer and all applicable Legislative Requirements and Policies and Plans.

### **13.2 Non-Conforming Offer**

- (a) An Offer that does not comply with clause 13.1 is a Non-Conforming Offer.

- (b) Council may, but is not bound to, consider or accept a Non-Conforming Offer.

## **14. Acceptance and consideration of Offers**

### **14.1 Council not obliged**

Council is under no obligation to:

- (a) review or consider any Offer submitted;
- (b) shortlist any Respondent (if applicable);
- (c) accept the lowest Offer (if applicable);
- (d) accept any Offer; or
- (e) negotiate or sign a contract for the Supply with any Respondent.

### **14.2 Council may annul Procurement Process**

Without limiting any other term of this Invitation to Offer, Council may shortlist Respondents (if applicable), accept or reject any Offer (including rejecting all Offers in order to reissue this Invitation to Offer) or annul the Procurement Process, at any time, or terminate the Procurement Process, without any obligation to inform the affected Respondent or Respondents of the grounds for Council's action or inaction.

### **14.3 Council's other discretions**

- (a) At any time and in its absolute discretion, Council may:
  - (i) invite all Respondents to change its Offer to take account of a change in any regard concerning the Offer Documents, including to the Scope and Specification; and
  - (ii) change the Closing Time by issuing all Respondents an Addendum under clause 7(a).
  - (iii) under Chapter 6 Contracting, section 228 (7) of the *Local Government Regulation 2012* invite all persons who submitted an Offer to change their Offer to take account of the change (of specification) before making a decision on the Offer.
- (b) After the Closing time may invite all Respondent change their Offer to take into account of a change in the offer specifications.
- (c) At any time before the Closing Date for Enquiries and in its absolute discretion, Council may:
  - (i) invite all Respondents to change its Offer to take account of a change in any regard concerning the Offer Documents, including to the Scope and Specification; and
  - (ii) change the Closing Time by issuing all Respondents an Addendum under clause 7(a).
- (d) Notwithstanding any other provision of this Invitation to Offer, Council may, in its absolute discretion, and without limiting any other right which Council may have, do any one or more of the following at any time (and without any obligation to do so):
  - (i) request clarification or additional information from any Respondent;
  - (ii) provide additional information to any or all Respondents;
  - (iii) discontinue negotiations with any Respondent;
  - (iv) proceed to negotiate with one Respondent or a third party, but not with other or any Respondents, and without any obligation to notify other or any Respondents that it is so proceeding;
  - (v) without limiting clause 14.3(d)(iv), enter into discussions with one or more Respondents;
  - (vi) shortlist or refuse to shortlist any or all Offers received (if applicable); and
  - (vii) decide not to proceed with the Procurement Process and not shortlist any Respondent, accept any Offer and/or enter any contract for the Supply.

### **14.4 Acceptance of an Offer**

- (a) An Offer is deemed to be accepted by Council only when Council provides to a Respondent a letter of award. For the avoidance of doubt, a letter of award under this clause 14.4(a) will refer only to written notice given by Council which is expressly titled 'Letter of Award' and expressly states that it is a notice given to the Respondent for the purposes of this clause 14.4(a).

- (b) Council will use reasonable endeavours to a Letter of Award under clause 14.4(a) within 90 Business Days from the Closing Time.

## **15. Warranties**

### **15.1 Respondent's investigations**

In submitting an Offer, the Respondent warrants that it has carried out all relevant investigations and has examined and acquainted itself with and satisfied itself concerning:

- (a) the contents of the Offer Documents and their completeness, currency and accuracy;
- (b) all information which is relevant to the risks, contingencies and other circumstances which could affect the Offer; and
- (c) the accuracy, completeness and sufficiency of the Offer.

### **15.2 Respondent's ability**

In submitting an Offer, the Respondent further warrants:

- (a) the accuracy of all information provided by the Respondent in the Offer;
- (b) that it has all necessary experience, skill and resources to perform and carry out its obligations in accordance with the Offer Documents;
- (c) that the Respondent is ready, willing and able to commence and carry out the Supply if required by Council; and
- (d) that its Offer complies with all applicable Legislative Requirements and Policies and Plans.

## **16. Investigations by Respondents**

Respondents must make their own investigations as to the nature of the Site(s) and its surrounds and satisfy themselves as to the accuracy and completeness of any matters stated in the Offer Documents and of any assumptions upon which Respondents base their Offers prior to submitting their Offer.

## **17. Information required after opening of Offers**

### **17.1 Respondent to provide additional information if requested**

The Respondent must provide, after the opening of Offers, any additional information which may be requested by Council for evaluation of the Offer(s).

### **17.2 Respondent interviews**

- (a) Clause 17.2 will only apply if clause 5 provides that Respondent interviews are 'Mandatory'.
- (b) Without limiting clause 14, the Respondent must make itself available after the Closing Time to attend an interview in relation to their Offer at the time(s) and at the location(s) nominated by Council. The Respondent must be represented at such interviews by a responsible member or members of its staff who are conversant with all technical, financial and contractual details of the Respondent's Offer, who are authorised to make, at the interview, any decision on behalf of the Respondent and who are able to indicate the relative values of any items under discussion.

## **18. Offer evaluation**

### **18.1 Statutory evaluation**

Evaluation of Offers will be generally in accordance with the requirements of the *Local Government Act 2009* and the *Local Government Regulation 2012*, including that Council will have regard to the following principles:

- (a) value for money;
- (b) open and effective competition;
- (c) the development of competitive local business and industry;
- (d) environmental protection; and
- (e) ethical behaviour and fair dealing.

### **18.2 Other**

In addition to the principles in clause 18.1 factors which will be taken into consideration by Council in assessing Offers and Respondents include:



No	Criteria
1	Compliance with this Invitation to Offer, including Schedules
2	Price
3	Experience
4	Licences and Certificates

## 19. Reliance by Respondent

### 19.1 Council makes no representations

Council does not make any representations, express, implied or inferred, or provide any undertakings to Respondents other than to invite them to submit an Offer.

### 19.2 Offer information for convenience only

Any information supplied to a Respondent in the Offer Documents or otherwise or in subsequent oral or written communication by or on behalf of Council is provided to the Respondent for convenience only and may not be complete, up to date or accurate.

### 19.3 Respondent not to rely

The Respondent must not rely upon any matter disclosed or representation, warranty or statement (oral or otherwise) made to the Respondent by Council, whether in the Offer Documents or otherwise, and must make and rely solely upon its own independent investigation, judgment and assessment of any such matter or representation.

### 19.4 Respondent to examine information

The Respondent must carefully review the Offer Documents and all documentation and all other material provided and must make any enquiries which the Respondent considers necessary or desirable to verify the information and materials contained in the Offer Documents or in any subsequent oral or written communication or material.

## 20. No collusion

The Respondent warrants that:

- (a) neither the Respondent nor any of its employees, officers or agents nor any other party on its behalf had any knowledge of the Returnable Schedules of any other Respondent prior to submitting its Offer nor has the Respondent disclosed to any rival Respondent its Returnable Schedules;
- (b) neither the Respondent nor any of its employees, officers or agents nor any other party on its behalf have entered into any contract, arrangement or understanding having the result that on being shortlisted for the Supply, having its Offer accepted and/or being awarded the contract for the Supply, the Respondent will pay to any unsuccessful Respondent any moneys or other reward in respect of or in relation to the Offer, Procurement Process and/or any contract for the Supply; and
- (c) the Offer is a genuine and competitive offer.

## 21. Conflicts of interest

### 21.1 Respondent to identify conflicts

Respondents must clearly identify in Returnable Schedule 1 if they have any actual or perceived conflict in responding to this Invitation to Offer, and if so, identify the manner in which they intend to deal with that conflict.

### 21.2 Respondent to notify if conflict arises

If, at any time, an actual or potential conflict of interest arises for any Respondent, that Respondent must immediately notify Council in writing of that conflict of interest.

### 21.3 Council's rights

If a Respondent notifies Council of an actual or potential conflict of interest or Council becomes aware of the existence of an actual or potential conflict of interest, Council may, in its absolute discretion:

- (a) enter into discussions to seek to resolve such conflict of interest;
- (b) cease further consideration of and disregard the Offer lodged by that Respondent; and/or

- (c) take any other action, as it considers appropriate.

#### **21.4 Respondent must not canvas support**

Any Respondent who directly or indirectly canvasses support from an elected member, employee or agent of Council will be disqualified and any Offer submitted will not be considered.

### **22. Respondent's costs**

- (a) Except to the extent expressly provided by this Invitation to Offer, Council is not responsible for, and is not liable to pay for, any costs, expenses, losses or damages (including to a claim for economic loss or loss of opportunity), however arising which a Respondent incurs or becomes liable for in relation to or in connection with:
  - (i) the preparation of an Offer;
  - (ii) any error, omission, or misrepresentation (express or inferred) in the Offer Documents;
  - (iii) any representations by or on behalf of Council;
  - (iv) the submission of an Offer;
  - (v) subsequent clarifications to an Offer;
  - (vi) submissions after lodgement of an Offer (whether or not that submission is required by Council);
  - (vii) attendance at any Respondent interviews under clause 17.2;
  - (viii) the termination of the Procurement Process: or
  - (ix) any other part of the Procurement Process,and the Respondent releases Council from any such claim whatsoever and howsoever brought or any costs, expenses, losses or damages (including to a claim for economic loss or loss of opportunity) arising from any claim, suit, demand, proceeding or action which, but for this Invitation to Offer, the Respondent may have had against Council in respect of the matters referred to in clauses 22(a)(i) to 22(a)(ix).
- (b) Each Respondent participates in this Procurement Process at its own risk.

### **23. Use of information**

#### **23.1 Offers are Council property**

All Offers submitted by a Respondent become the property of Council and will not be returned to the Respondents.

#### **23.2 Offer Documents are Council property**

The Offer Documents and all documents, information, drawings, specifications, technical information and other material and information provided to a Respondent (whether before or after the issue of this Invitation to Offer):

- (a) remain the property of Council;
- (b) must only be used for the purpose of preparing its Offer and for no other purpose; and
- (c) must not be disclosed to any person other than to a person who is assisting the Respondent in preparing its Offer.

#### **23.3 Intellectual property in Offer Documents**

All intellectual property rights which exist in information contained in this Invitation to Offer or any related material will remain the property of Council but the Respondent is permitted to use that information and material for the purpose only of compiling its Offer.

#### **23.4 Confidential Information**

- (a) Subject to clause 23.4(b), the Respondent must keep confidential all documents in connection with its Offer (including the Offer Documents), the matters discussed with Council or its agents in connection with the Procurement Process and the Respondent's Offer, all correspondence in connection with the Procurement Process and the Respondent's Offer, Council's responses to any queries, comments or questions posted to the E-Procurement Platform's 'Online Forum' (including Council's responses to other Respondents' queries, comments or questions) and any other information which is expressed as (or reasonably inferred to be) provided to the Respondent by Council or its agents in confidence.

- (b) The Respondent must obtain the prior written consent of Council to disclose any information referred to under clause 23.4(a).

### **23.5 Respondent licences Council**

Each Respondent licences Council and its officers, employees, agents, advisers and representatives (Personnel) to copy, adapt, amend, disclose or do anything else necessary (in Council's sole discretion) to all material (including that which contains intellectual property rights of the Respondent or other persons) contained in its Offer for the purpose of the Procurement Process, including Council's evaluation of the Respondent's Offer, inviting written tenders for the Supply, negotiating any contract for the Supply with the successful Respondent (if this Procurement Process proceeds to that stage) and this Procurement Process generally.

### **23.6 Council may make copies**

Council and its Personnel may make such copies of an Offer as it requires for those purposes.

### **23.7 Right to Information Act 2009**

- (a) The *Right to Information Act 2009 (RTI Act)* provides members of the public with a right to access documents held by Queensland Government agencies (including local governments).
- (b) The *RTI Act* requires that documents be disclosed upon request, unless the documents are exempt or, on balance, disclosure is contrary to the public interest. Information provided by the Respondent is potentially subject to disclosure to third parties pursuant to the *RTI Act*.
- (c) If disclosure under the *RTI Act*, or general disclosure of information provided by the Respondent, would be of substantial concern to the Respondent, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, including Personal Information, this should be indicated by the Respondent in its Offer. Council cannot guarantee that any information provided by the Respondent will be protected from disclosure under the *RTI Act*.
- (d) The Respondent must familiarise itself with the relevant provisions of the *RTI Act* dealing with the requirements for disclosure of information by agencies, and the grounds on which access to information may be refused.
- (e) Council accepts no responsibility for the accuracy or adequacy of any information it provides to Respondents concerning the content or effect of the *RTI Act*.
- (f) Council reserves the right to disclose, by publication by means of media of its choosing upon conclusion of the Procurement Process and/or award of any contract for the Supply, any details of the name and address of the successful Respondent, a description of the Supply, the commencement date of any contract for the Supply awarded, and the price or value of any contract for the Supply awarded.

## **24. Information Privacy Act 2009 compliance**

### **24.1 Compliance with the *Information Privacy Act 2009***

By submitting an Offer, the Respondent warrants that it has obtained the consent of each individual whose Personal Information is included in the Offer for:

- (a) the inclusion of their Personal Information in the Offer;
- (b) the use of the Personal Information by Council for the purpose of the Procurement Process, including the evaluation of the Respondent's the Offer; and
- (c) the disclosure of the Personal Information to other parties (including professional advisors) as may be involved in assisting Council with the Procurement Process, including the evaluation of the Respondent's Offer.

### **24.2 Indemnity**

The Respondent must indemnify Council against any claim, damage or loss (including legal costs and expenses) that Council may incur as a consequence of a breach by the Respondent of the warranty in clause 24.

### **24.3 Other**

- (a) Any Personal Information exchanged between the Respondent and Council must be dealt with in accordance with the *Information Privacy Act 2009*.

- (b) The Respondent must immediately notify Council upon becoming aware of any breach of this clause 24.

## **25. Governing law and jurisdiction**

### **25.1 Governing law**

This Invitation to Offer and the Offer Documents are governed by the laws in force in Queensland.

### **25.2 Governing jurisdiction**

Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland and the courts of appeal from them.

## **26. Joint and several liability**

If a Respondent comprises two or more parties, their obligations and liabilities (whether as a joint venture, consortium, partnership or any other unincorporated grouping of two or more persons):

- (a) the obligations and liabilities of those persons is joint and several; and
- (b) those persons must notify Council of their representative, who must have authority to bind the Respondent and each of those persons.

## Non-Returnable Schedule 1 – Scope and Specification

### SCHEDULE A – SPECIAL TERMS AND CONDITIONS

#### **SERVICES TO BE PROVIDED under this Agreement:**

##### **1. MANAGEMENT OF PROSTON SWIMMING POOL - PROSTON**

- 1.1 The Services are managing the Proston Swimming Pool, Collingwood Street, Proston, Qld 4610, with a commitment to the promotion, presentation and maintenance of this recreational destination.
- 1.2 The Operator must have or be able to obtain prior to commencement of the Management Agreement a Certificate iv in Swimming Pool and Spa Service, Bronze Medallion as recognised by the Royal Life Saving Society Australia and a Senior First Aid Certificate,
- 1.3 The Operator must provide prior to commencement of Management Agreement a copy of Police Clearance Certificate and copy of current Blue Card.
- 1.4 The Operator must maintain public liability insurance to the value of twenty million dollars (\$20,000,000) and provide Council evidence of this insurance prior to signing of the Management Agreement.
- 1.5 These Services include:
  - a) performing and providing all Services that are consistent with the good and proper management of the Pool;
  - b) opening the Pool to the public during the specified Pool hours;
  - c) provide Learn to Swim classes, exercise programs and classes;
  - d) provide assistance to and coaching of swimming club members;
  - e) complying with council requirements, including taking guidance from an officer of the Council in relation to Pool operation and control;
  - f) maintaining a log book in which they will record;
    - 1) the appearance of the water;
    - 2) bathers' complaints of sore ears, eyes, etc.;
    - 3) other relevant matters including weather conditions and filter conditions;
    - 4) any other matter required, by an officer of the Council, to be recorded;
  - g) on a daily basis during the swimming season ensure;
    - 1) prior to the use of the Pool;
      - i. the Pool surrounds are tidy; and
      - ii. any papers and rubbish within the Pool surrounds are collected and disposed of properly;
    - 2) prior to the use of the Pool, and at mid-afternoon, and between four and five pm;
      - i. check pH levels;
      - ii. check the free chlorine levels;
      - iii. check operation of chemical pumps;

- 3) level of Hypo Tank is checked;
  - 4) all check results are recorded;
  - 5) the floor, sink and testing equipment are in a clean and safe condition before leaving the control room; and
  - 6) the log book is updated
- h) as required and when requested by an officer of the Council or Proston State School ensure:
- 1) filters are backwashed;
  - 2) the hair and lint screen is cleaned (at least twice weekly);
  - 3) dressing rooms, toilets and showers are swept out, hosed and cleaned, that all toilets have toilet rolls, all mirrors are clean and that general standards of cleanliness are maintained throughout the Pool surrounds;
  - 4) the Pool surface is skimmed of leaves, grass and other materials and the Pool vacuumed;
  - 5) the Pool walls and entry point fixtures above the water line are cleaned to remove grease, dirt and other materials;
- i) ensure any defects in the operation of the pump, filtrations, or any other equipment are remedied as far as practicable on being brought to the Provider's attention;
- j) ensure Council, or Proston State School, or their nominated representative is informed immediately of any equipment defect;
- k) ensure no alterations, adjustments, or removal of any equipment, fittings, and/or appliances occurs without prior Council and/or Proston State School consent;
- l) as and when requested by users of the swimming Pool, ensure the independent access Pool lift and steps are installed (if provided at the Pool);
- m) ensure the swimming Pool blankets are placed over the Pool at the end of the day and removed before opening time the following day;
- n) during thunder/electrical storms or power blackouts ensure the Pool is closed;
- o) ensure that the Pool/s are not emptied without permission of the authorised Council Officer and/or Proston State School;
- p) ensure all personal electrical equipment is tested and tagged annually by a qualified electrician;
- q) undertake regular inspections and restocking of first aid kit stock to ensure expiry dates are not exceeded;
- r) as required ensure the Pool surrounds are patrolled so that the conduct of Pool users, both swimmers and non-swimmers, is controlled to ensure that good order is maintained by all persons at or in the Pool at all times;
- s) ensure Council and the Proston State School is notified immediately of any accidents or incidents of a safety nature that has occurred within the grounds of the Complex;

- t) Council will provide all safety equipment and devices in accordance with Royal Life Saving Australia rules and related regulations;
- u) operate the Pool Canteen in accordance with this Agreement and;
  - 1) be responsible for the acquisition of, and payment for, all foods and other substances sold at the Canteen;
  - 2) the Provider may retain all proceeds of sales;
  - 3) the Provider is not to part with possession or sublease or sub-let the Pool Canteen area at any time except with the prior written consent of the Council and Proston State School;
- v) in respect of group bookings including, but not restricted to, those made by school groups, community groups, sporting groups, rehabilitation organisations, fitness groups, swimming clubs, and swimming carnivals, ensure;
  - 1) the Pool behaviour rules have been highlighted; and
  - 2) an indemnity form has been completed and signed by an appropriate person; and
  - 3) the group's current insurance policy has been sighted and copied.
- w) prior to the beginning of the first Pool Season under this Agreement ensure;
  - 1) a compliant Pool Operating Manual is prepared; and
  - 2) that such manual is kept up to date during the entire period of the Agreement and;
  - 3) that it is available for inspection at any time at the Pool.

## **2. POOL SEASON**

- 2.1 The Pool Season will commence on the first day of the period identified as the Queensland September School Holidays and end on the last day of the period identified as the Queensland April School Holidays in the following year.
- 2.2 The Pool may be open to the public outside of the Pool Season dates, as deemed appropriate by the Provider and agreed to by Council and the Proston State School.

## **3. OPERATING HOURS**

- 3.1 The Provider must ensure the Pool is opened to the public at a minimum between the hours:
  - a) Pool Season:
    - (i) 6am to 8am and 3pm to 6pm weekdays
    - (ii) 1pm to 5pm Weekends, Public Holidays, and School Holidays
    - (iii) Testing of Water on Weekends (12pm to 1pm) prior to opening to the public.
  - b) Christmas day and Good Friday:
    - (i) Closed
- 3.2 The hours may be extended by the Provider with the Agreement of the Council and Proston State School.

#### **4. PAYMENT FOR SERVICES**

- 4.1 The Council will pay the Provider a yearly amount of \_\_\_\_\_ exclusive of GST. Ninety per cent (90%) of that yearly amount will be paid during Pool Season and ten per cent (10%) of the yearly amount will be paid outside of Pool Season.
- 4.2 The fortnightly payments referred to in 4.1 are paid in arrears and will be in accordance with the Payment for Services Schedule that will be included in the contract prior to signing.
- 4.3 Each annual anniversary the fortnightly amount to be paid during the contract will be reviewed and increased by the rise in Consumer Price Index All Groups Brisbane for the June quarter.
- 4.4 All entrance fees and annual passes, group and school bookings income is to be retained by the Provider;
- 4.5 All income taken from the Canteen is retained by the Provider;
- 4.6 All income from swimming lessons/coaching and Provider initiated activities, agreed to with Council, is retained by the Provider;
- 4.7 Any expenses incurred by the Provider through the operation of the Canteen, and conducting swimming coaching/lessons, will be the responsibility of the Provider;
- 4.8 Additional expenses may be payable to the Provider provided that approval in writing has been obtained from the Council prior to the expenses being incurred;
- 4.9 The Provider shall issue a Tax Invoice if GST registered, or an Invoice if not GST registered to the Council before any payment is made pursuant to 4.1 and 4.2 above.

#### **5. FEES**

- 5.1 Pool entry fees will be in accordance with Council's schedule of Fees and Charges as set by Council from time to time.

#### **6. REPORTING**

- 6.1 At least monthly during the swimming season the Provider will provide Council, at a minimum, the following information:
  - a) the number of adults, children and non-swimmers attending the Swimming Pool each day, month and year;
  - b) a daily progressive total of the number of users of the Pool;
  - c) a statement of admission fees and other Pool revenue received by the Provider, including from the Canteen and from swimming coaching/lessons and also including any income received as a consequence of swimming Pool carnivals or events of a similar nature;
  - d) the number of 10 and 20 visit passes taken out each month, year and currently operating;
  - e) a book of records of reservations for swimming Pool carnivals or events of a similar nature;
  - f) a diary of incidents occurring at the swimming Pool;
  - g) a report of incidents occurring at the Pool within one day of any such occurrence.



**7. COUNCIL WILL PROVIDE:**

- 7.1 Pool Management (pursuant to this Agreement)
- 7.2 Tools and equipment necessary for the control of the filtration and chlorination plant, test kits, consumables and thermometer, (cyan uric acid) test kit and reagent;
- 7.3 Microbiology tests of the Pool water (and report results to the Provider);
- 7.4 Pool water balance test kits;
- 7.5 Log Book for Water Testing
- 7.6 Testing and tagging of Council supplied electrical equipment.
- 7.7 Life Saving Equipment
- 7.8 Safety signs

**8. PROSTON STATE SCHOOL WILL PROVIDE:**

- 8.1 Electricity for the swimming Pool and surrounds;
- 8.2 All Complex and Pool cleaning equipment and materials (including consumables and pool chemicals);
- 8.3 Payment of Council Rates;
- 8.4 Hoses and sprinklers;
- 8.5 Independent access Pool lift and steps; (if required)
- 8.6 Swimming Pool blankets and rollers;
- 8.7 Electrical repairs including maintenance;
- 8.8 Fire extinguishers;
- 8.9 Resuscitation equipment;
- 8.10 Electrical Test n' tag of School equipment
- 8.11 Maintenance of all buildings, grounds, pathways, and plant on the premises and within the complex including all external security lighting, in reasonable order and condition.

# Returnable Schedule 1

Quotation Form

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## **A. Tenderer details**

***If Tenderer is a partnership or an individual, complete these details:***

If an individual, full name:	
If a partnership, full names of each member of partnership:	
ABN:	
Business address:	
Contact person:	Name: Telephone number: Email: Facsimile:

***If Tenderer is incorporated, complete these details:***

Complete company name (i.e. include whether 'Limited' or 'Proprietary Limited'):	
Is company a trustee?	Yes/No
If company is a trustee, full name of trust is:	
ACN:	
ABN:	
Names of all company directors:	
Names of all company secretaries:	
Name of ultimate parent company:	
Names of all shareholders:	
Address of registered office:	
Address of principal place of business:	

Address of business nearest to Kingaroy:	
Contact person:	Name: Telephone number: Email: Facsimile:

**B. Tenderer's declarations and warranties**

The signatory below makes the following declarations for and on behalf of the Tenderer to South Burnett Regional Council:

1. The Tenderer has examined all of the Quotation Documents, including, without limitation, the following Addenda issued during the Procurement Process:
  - (a) Addendum no.
  - (b) Addendum no.
  - (c)

*Initialled on behalf of Tenderer:* \_\_\_\_\_

2. The Tenderer offers to carry out and supply the goods, services and works in accordance with the Tender Documents and its Tender, for the sum of:
 

**Quotation Price in numbers:** AUD\$ \_\_\_\_\_ (GST exclusive)

**Quotation Price in words:** \_\_\_\_\_ Australian dollars (GST exclusive) (**Tender Price**).

*Initialled on behalf of Tenderer:* \_\_\_\_\_

3. The Tenderer warrants:
  - (a) that its Quotation is a genuine attempt for the award of the Contract;
  - (b) that all of the contents of its Quotation are accurate;
  - (c) that the Tenderer has read, understood and complied with its obligations under the Quotation Documents;
  - (d) that it has sufficient financial resources to carry out and supply the goods, services and works in accordance with the Tender Documents;
  - (e) that it is not subject to any current or impending legal action of any kind which could impact on the financial viability of the Tenderer or its ability to carry out and supply the goods, services and works in accordance with the Quotation Documents; and
  - (f) that it has, or that it will have before entering into the Contract, all insurance cover required by the Quotation Documents, except to the extent that its Tender expressly states that it both does not have, and does not intend to procure, any given insurance cover.

*Initialled on behalf of Tenderer:* \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Position: \_\_\_\_\_

Who warrants that s/he is duly authorised to sign for, and enter into contracts on behalf of, the Tenderer.

## Returnable Schedule 2

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### Table of Rates and Prices

#### Price Schedule

##### EXAMPLE — SCHEDULE OF RATES—SERVICES

Line No	Service Description	Tender Unit	Price Tendered per unit (ex GST)	GST Component	Price Tendered per unit (inc GST)
1	Operation and Management of the Proston Swimming Pool	per fortnight			

##### EXAMPLE — LUMP SUM—SERVICES

Line No	Service Description	Tender Unit	Price Tendered (ex GST)	GST Component	Price Tendered (inc GST)
1	Operation and Management of the Proston Swimming Pool	per calendar year			

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Position: \_\_\_\_\_

Who warrants that s/he is duly authorised to sign for, and enter into contracts on behalf of, the Tenderer.

# Returnable Schedule 3

Insurance details

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**Tenderer/Contractor arranged Insurances/Certificates – Summary:**

Insurance type	Insurer/Provider	Policy number/Certificate number	Level of cover required	Expiry date
Public liability			\$20 million	
Worker's compensation				
Third party property damage				
Professional Indemnity Insurance				
Certificate iv Swimming Pool and Spa Service				
Bronze Medallion				
Senior First Aid Certificate				
Blue Card				

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Position: \_\_\_\_\_

Who warrants that s/he is duly authorised to sign for, and enter into contracts on behalf of, the Tenderer.