



Call for Submissions from Community Housing Providers (CFS-CHP)

Reference No. DHW36193816A26

Part 3: Terms and Conditions

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Disclaimer

These Guidelines have been prepared by DHW to assist prospective Respondents in making their own assessment of Housing Authority requirements and preferences in relation to the CFS-CHP framework and does not purport to contain all information that Respondents may require. The accuracy of any statements, opinions, projects, forecasts or other information (statements) contained in these Guidelines may change. Where any statements relate to future matters, no steps have been taken to verify that the statement is based on reasonable grounds, and no representation or warranty, expressed or implied, is made by DHW, or any of its officers, employees, advisers or agents that the statements are accurate.

Respondents should conduct their own independent investigations, review and analysis of the opportunity and the information set out in these Guidelines. Respondents must rely entirely on their own investigations, review and analysis, and not on these Guidelines or any information provided by or on behalf of DHW nor any of its employees, agents, advisers or consultants in relation to their assessment of the opportunity.

Neither DHW, nor any of its employees, agents, advisers or consultants (or their respective associated companies or businesses, partners, directors, officers or employees) makes any representation or warranty, express or implied, as to the accuracy, reliability or completeness of the information contained in these Guidelines or subsequently provided to Respondents by or on behalf of DHW or its advisors or consultants. To the maximum extent permitted by law, none of those persons shall have any liability (whether arising from negligence or otherwise) for:

- any representations or warranties (express or implied) or information contained in, or for any omissions from, these Guidelines or any written, oral or other communications transmitted to the Respondents by or on behalf of DHW or any of its employees, agents, advisers or consultants
- any cost, expense, loss, claim or damage of any nature arising in any way out of or in connection with the statements, opinions, projections, forecasts or other representations, actual or implied, contained in or omitted from these Guidelines or by reason of any reliance thereon by any person or body.

DHW may, at its sole and absolute discretion, but without being under any obligation to do so, amend, update or supplement the information contained in these Guidelines. Any further information will be and is provided subject to the terms and conditions set out in this notice.

Nothing in these Guidelines will be construed to be, nor create a binding contract (express or implied, including a process contract) enforceable against DHW by any Respondent. Any conduct or statement by DHW, whether prior to, or after the issue of these Guidelines is not, and these Guidelines are not, and must not be deemed to be, an offer to contract on the part of DHW or a binding undertaking of any kind by DHW. Each Respondent waives any right to administrative law relief (whether under statute, the common law, equity or otherwise) to which that Respondent is, or may in the future become, entitled in connection with this document or the process outlined in it.

1. Interpretation

These terms and conditions are to be interpreted in favour of Department of Housing and Works (Housing Authority) in the event of any ambiguity or inconsistency.

2. Rights and Obligations

2.1. The Department of Housing and Works' Rights

DHW reserves the right to:

- a) vary the Conditions of Submission
- b) vary any other part of these Guidelines
- c) suspend or terminate the Evaluation Process
- d) admit or exclude any Respondent from the Evaluation Process at any time
- e) consider or not consider any Submission
- f) request and rely on clarification or additional information from any or all Respondents
- g) provide additional information to any or all Respondents
- h) select, or enter into negotiations with, more than one Respondent
- i) discontinue negotiations with any Respondent
- j) elect not to proceed to select any one or more Submissions and/or Respondents
- k) cancel, add to or amend the information, requirements, terms, procedures or processes set out in these Guidelines.

2.2. No Fettering

The Respondent acknowledges and agrees that nothing contained or implied in these Guidelines will be construed or interpreted as unlawfully restricting or otherwise unlawfully affecting the unfettered discretion of DHW to exercise any of its executive or statutory powers or functions under any law.

2.3. Exclusion of Liability

In no event will DHW be liable for:

- a) any cost, expense, loss, claim or damage arising out of, or in connection with, a Respondent's participation in the subject matter of these Guidelines including, without limitation, the preparation and lodgement of a Submission, or other activities following a CFS Determination
- b) any cost, expense, loss, claim or damage resulting from the exercise of any of DHW's rights referred to in this section
- c) any failure to inform a Respondent of the exercise of any of DHW's rights under this section.

2.4. Exclusion from Consideration

Where, under these Guidelines, DHW may exclude a Submission from consideration or exercise any other discretion, DHW may do so at its sole and absolute discretion and will not be required to act, or be restrained from acting, in any way or for any reason.

2.5. Exercise of Rights

If DHW does exercise any of its rights under this section, it will endeavour to inform Respondents. However, DHW will not be under any obligation to do so.

3. Relationship Between Parties

3.1. No offer or contract

The Respondent acknowledges and agrees that:

- a) These Guidelines do not constitute an offer or an invitation to treat.
- b) No contract exists or will arise between DHW/Housing Authority and any Respondent in respect of these Guidelines or the subject matter of these Guidelines or any Submission or the subject matter of any Submission unless and until a binding Contract is executed by DHW/Housing Authority and the Respondent on terms acceptable to DHW.

3.2. The Department of Housing and Works' obligations and liabilities

Without limiting Rights and Obligations above, any obligations or liabilities of DHW to the Respondent in respect of any aspect of the Evaluation Process:

- a) are limited to those obligations and liabilities expressly set out in these Guidelines
- b) exclude (to the extent permitted by law) any obligations or liabilities which may otherwise be implied or imposed on DHW under contract, equity by statute or otherwise.

4. Consideration of a Submission

4.1. General

Neither the Submission(s) requiring the comparatively lowest financial outlay for housing on the part of DHW, nor any Submission, will necessarily be considered by DHW.

4.2. Whole or Part Submission

DHW may consider the whole or any part of a Submission.

4.3. Subject to Agreement

Notwithstanding any discussions during the Engagement and Collaboration phase, the evaluation of Submissions in accordance with these Guidelines, or any CFS Determination, the pursuit of any Submission by DHW is subject to further progression and the execution of a Contract(s) in a form(s) acceptable to DHW as the project specifics require.

4.4. No Legal Rights or Obligations

No legal rights or obligations in relation to the supply or refurbishment of dwellings will arise between DHW and any Respondent prior to the execution of a Contract in a form acceptable to DHW.

4.5. Acceptance of Conditions of Submission

Lodgement of a Submission indicates the Respondent's acceptance of the Conditions of Submission.

5. Ownership of these Guidelines

All documents comprising these Guidelines remain the property of DHW. All copyright and other intellectual property rights contained in these Guidelines are and remain vested in DHW and any third party who has given DHW permission to incorporate them in these Guidelines.

6. Ownership of Submissions

By lodging a Submission, the Respondent agrees that the Submission lodged with DHW becomes the property of the Crown in right of the State of Western Australia at the time of lodgement and that DHW may make further copies of, and use, the Submission for the purpose of conducting the Evaluation Process, considering and/or analysing Submissions and negotiating and preparing a Contract(s).

7. Intellectual property rights

The Respondent agrees to grant DHW and its officers, contractors, employees, agents and advisers an irrevocable, perpetual, royalty free, non-exclusive license to copy, adapt, amend, disclose to third parties or do anything else necessary (at DHW's discretion) to all material (including that which contains intellectual property rights of the Respondent or other persons) contained in the Submission for the purpose of:

- a) DHW's evaluation of Submissions
- b) negotiating the Contract(s) if the Respondent proceeds to contract negotiation
- c) reference during resolution of any issues that may occur in relation to a Contract(s) or these Guidelines
- d) other matters relating to such matters including audit requirements.

The Respondent must obtain all consents, waivers, licenses and approvals necessary or required in order for DHW to exercise its rights described in this section without infringing the rights of any third party. The Respondent represents and warrants to DHW that such exercise by DHW will not infringe any third-party rights.

8. Freedom of Information

The Respondent acknowledges that the Freedom of Information Act 1992 (WA) applies to the information provided by Respondents in any Submissions under these Guidelines.

9. Confidentiality

In accordance with these Guidelines, DHW reserves the right, at its sole and absolute discretion, to require that all information, other than publicly available information, provided to Respondents by or on behalf of DHW (and copies of such information) be returned to DHW or, at the option of DHW, destroyed at any stage.

9.1. Obligation of Confidentiality

DHW undertakes to keep confidential any confidential information provided to DHW by:

- a) successful Respondents prior to the award of the relevant Contract(s)
- b) unsuccessful Respondents, after notification that their Submissions are not being further considered by DHW.

9.2. Limitation of Obligation of Confidentiality

The obligation of confidentiality does not apply if the confidential information:

- a) is disclosed by DHW to its advisers or employees solely in order to consider a Submission
- b) is authorised or required by law (including under the Financial Management Act 2006 and the Auditor General Act 2006) to be disclosed or upon request by a Minister or by Parliament or any committee of Parliament; or
- c) is in the public domain.

The obligation may be superseded or amended in accordance with any provisions in a Memorandum of Understanding or Contract.

9.3. Disclosure of Confidential Information

DHW will treat as confidential any confidential information provided by Respondents prior to the award of a Contract. If a Contract is awarded, DHW will not keep such information confidential unless:

- a) the successful Respondent requests that specific information should be kept confidential
- b) the specific information is by its nature confidential, and
- c) DHW agrees to the request.

In considering a request for confidentiality, DHW will consider whether disclosure would cause detriment to any other third party and the circumstances under which the information was disclosed. DHW will also consider whether confidentiality is supported by the underpinning principles of value for money, accountability and transparency.

10. Conflict of Interest

If a Respondent identifies a conflict of interest, or likely conflict of interest, DHW may exclude the Submission from consideration. If a Respondent identifies a conflict of interest or a risk of conflict of interest arising after lodgement of the Submission but prior to the completion of the Evaluation Process for that Submission, that Respondent must immediately disclose the conflict of interest to DHW. A Respondent may be required to resolve the conflict of interest in accordance with the

direction of DHW before its Submission becomes subject to final evaluation under these Guidelines (where applicable).

11. Collusive Behaviour

Respondents must ensure that they do not engage in collusive behaviour, anti-competitive conduct or any similar conduct with another Respondent, or any of its officers, employees or agents, in relation to the preparation of Submissions in response to these Guidelines.

12. No Improper Influence

Respondents must not, and must ensure that none of their officers, employees or agents, attempt to improperly influence an employee of DHW in connection with the consideration and/or evaluation of Submissions or approach any employee of DHW concerning the progress of the Evaluation Process other than DHW's Evaluation Manager set out in these Guidelines.

13. Respondents to Inform Themselves

Respondents will be deemed to have:

- a) Examined these Guidelines, any documents referred to herein, and any other information made available in writing by DHW to Respondents for the purpose of participating in the Evaluation Process.
- b) Examined all further information which is obtainable by the making of reasonable enquiries relevant to the risks, contingencies and other circumstances having an effect on their participation in the Evaluation Process and their Submission.
- c) Satisfied themselves as to the correctness and sufficiency of their Submission.

14. The Department of Housing and Works' Investigations

14.1. General

DHW may conduct independent research and investigations regarding the Respondent and the information contained in the Submission. DHW reserves the right to take into account any matters revealed as a result of such research and investigations in evaluating Submissions.

DHW will be under no obligation to provide Respondents with details of the results of such research and investigations. DHW reserves the right to defer or cancel the acceptance of a particular Submission or take such other action as it considers appropriate in light of the information it receives as a result of conducting such research and investigations.

14.2. Provision of Reasonable Assistance

Respondents must provide, at their own cost, all reasonable assistance required by DHW in undertaking and conducting the security and financial checks. DHW reserves the right to request financial statements and other information relevant to determining the financial viability of Respondents, their partners, associates, subcontractors or related entities including consortium members.

14.3. Costs of Preparing Submission and Process Participation

Participation in the Evaluation Process outlined in these Guidelines, or in relation to any matter concerning these Guidelines, is at the Respondent's sole risk, cost and expense (unless otherwise agreed noting that DHW may agree or set out to provide project support via a CFS Determination

and any subsequent Contract). DHW will not be responsible in any circumstances for any cost or expense incurred by a Respondent in preparing or lodging a Submission or in taking part in the Evaluation Process or taking any action related to the Guidelines unless otherwise agreed.

14.4. Compliance Costs

Respondents must pay all costs of complying with the terms and conditions of these Guidelines, whether applying to the Evaluation Process or to the performance of any Contract unless otherwise agreed.

14.5. Taxes and Charges

Respondents must indicate the proportion of any price, contribution or fee that constitutes GST. Respondents must pay all applicable overseas and Australian (Federal, State and Local Government) taxes and charges including any goods and services tax, consumption tax or any other form of indirect tax applicable to the performance of any contract.

15. Respondent, Partner and Contractor Media Protocol

The protocol outlined below applies to all media activity concerning DHW development projects.

Respondents, DHW's development partner ('the partner') and any party contracted by DHW's partner must follow this protocol throughout all stages of the project for media opportunities. This process does not apply to project sales and marketing activity, which should follow the project's approved Communications Strategy/Plan.

No information about the project is to be made available to the public without approval from DHW.

15.1. Discussion topics

Any public comment made by the Respondent, partner or a contracted party must be focused on that party's role in the project and their area of expertise.

Neither the Respondent, partner nor any contracted party is to discuss the tenure of the housing product (e.g. social housing), nor the social outcomes sought through the project, unless DHW has provided the party with written approved messaging on such topics.

15.2. Announcements

The Minister for Housing and Works retains the right of first refusal for all announcements and media opportunities throughout the life of the project. DHW will notify the Minister's office in advance of project milestones and other opportunities. The Minister's office will then advise DHW whether the Minister accepts the opportunity to make the announcement.

15.2.1. Minister accepts opportunity

Should the Minister accept the opportunity, a Ministerial media statement will be issued. An event—typically an on-site media event—may also take place, at which the Minister will make an address, announcing the milestone.

The partner's representatives will be invited to attend all on-site Ministerial media events. Relevant contracted parties may also be invited where appropriate.

The partner and relevant contracted parties may issue their own media statements following the release of the Minister's media statement; however, all content requires DHW approval prior to publication.

15.2.2. Minister declines opportunity

Should the Minister decline the opportunity, DHW may work with the partner to issue a departmental media statement to announce the relevant milestone.

The Respondent, partner and relevant contracted parties may also issue their own media statements following the release of the departmental media statement (if required); however, all content requires DHW approval prior to publication.

15.3. Media statements

Any media statement to be issued by the Respondent, partner or a contracted party that references the project in any way must be provided to DHW for review and approval prior to publication. Approval may also be sought from the Minister's office.

Media statements must be provided to DHW at least five (5) business days ahead of the intended publication date.

15.4. Media enquiries

Any media enquiry received by the partner or a contracted party that relates to the project in any way must be provided to DHW as soon as possible following receipt. Any media response prepared by the Respondent, partner or any contracted party that relates to the project in any way must be provided to DHW for review and approval prior to distribution to the enquiring media organisation.

15.5. Interviews

Should the Respondent, partner or a contracted party wish to participate in a media interview in which the project may be discussed, whether it be for print, radio, television or online publication, they must notify DHW as soon as possible.

A brief outlining the details of the interview and proposed messaging relating to the project must be provided to DHW for review prior to the interview.

15.6. Other communications

Any other communications material issued by the Respondent, partner or a contracted party that references the project in any way must be provided to DHW for review and approval prior to publication.

This includes, but is not limited to, signage, advertising, newsletter articles, social media content and website content.

The review and approval process for these items will be determined by the DHW project team in consultation with the partner's project team and should be captured in the project's communications strategy documentation.

15.7. Style Guide

Please refer to DHW Style Guide for guidance on appropriate logo usage across communications material related to the project. Assistance can be provided by the assigned DHW communications officer.

15.8. Contacts

All media enquiries and content for review by DHW must be emailed to the assigned DHW communications officer, with the project manager copied in as appropriate.