



Request for Quotation - Supply of Consultant
Services
RFQ Formal Instrument of Agreement
Consultant Services
Template guide notes (Version 3 – December 2018)

Important information:

These guide notes are for use only in relation to Version 5 of the Request For Quotation - Supply of Consultant Services and Version 5 of the RFQ Formal Instrument of Agreement Consultant Services.

These guide notes are of a general nature only and must not be relied upon as a substitute for seeking specific legal advice. If you have any legal queries about the templates, contact the Office of the Crown Solicitor.

Request For Quotation - Supply of Consultant Services

RFQ Formal Instrument of Agreement - Consultant Services

Template guide notes (Version 3 – December 2018)

1 About these guide notes

These guide notes are issued by the Office of the Crown Solicitor (**OCS**) to provide guidance in relation to the use of the following template documents:

- Request for Quotation – Supply of Consultant Services (Version 5) (**RFQ Consultant Services**); and
- RFQ Formal Instrument of Agreement – Supply of Consultant Services (Version 5) (**FIOA Consultant Services**).

These notes are not substitute for seeking legal advice from OCS. Any legal queries in relation to the templates should be referred to OCS.

Please contact OCS with suggestions as to how the template documents can be improved.

Any queries in relation to procurement policy or practice should be directed the Department of Treasury and Finance.

2 Template limitations and use exclusions

The template documents are intended for use in relation to the procurement of Consultant services by way of a quotation process.

The template documents are suitable for use only in relation to *procurements that are both low risk and low value*.

The templates are not suitable for the procurement of general services that are not consultant or advisory services. Separate RFQ templates have been developed for use in relation to the procurement general services that are both low risk and low value.

Warning: The template documents must not be used for:

- the procurement of any kind of legal services;
- the delivery of services that are high risk (for example, because of the consequence of the services not being properly performed);
- standing offer arrangements for the delivery of services;
- transactions that are complex;
- any IT procurement to which the Treasurer's Instruction 1123(2) applies; or
- any procurement in respect of which the Treasurer's Instructions requires an agency to call tenders (in such cases the OCS templates applicable to Requests for Tender should be used).

3 RFQ Consultant Services template

3.1 RFQ Consultant Services template structure

The RFQ Consultant Services template consists of the following parts:

Part A: RFQ Overview
Part B: RFQ Information Table
Part C: Contract Information Table
Part D: Glossary of Terms
Part E: Conditions of Quotation
Part F: Conditions of Contract
Part G: Quotation Form

3.2 Quotation procurement process

The general terms and conditions applicable to the procurement process are contained in Part E: Conditions of Quotation. Transaction specific information about the *procurement process* (i.e. information about the calling, lodgment and evaluation of quotations) is inserted in Part B: RFQ Information Table.

Item 8 of the RFQ Information Table allows for the inclusion of special conditions. If it is necessary to change the Conditions of Quotation, the change should be made by completing Item 8.

Special conditions override what is contained in the Conditions of Quotation to the extent of any inconsistency, so care should be taken when drafting these.

3.3 Contractual information

The general terms and conditions applicable to the supply of the services are contained in Part F: Conditions of Contract. Transaction specific information that is '*contractual*' (ie information that applies to the supply of the services) is inserted in Part C: Contract Information Table.

Item 8 of the Contract Information Table allows for the inclusion of special conditions. If it is necessary to change the Conditions of Contract, the change should be made by completing Item 8.

Special conditions override what is contained in the Conditions of Contract to the extent of any inconsistency, so care should be taken when drafting these.

3.4 Quotation form

Part G contains a Quotation Form for use by consultant submitting a quotation. The Quotation Form constitutes an offer by the consultant to supply the services. Part G also includes a section titled 'Acceptance Statement'.

3.5 Forming a contract

The RFQ Consultant Services template provides that a contract for the supply of the services can be formed in one of two ways:

- (I) A contract can be formed by the State accepting the consultant's quotation as submitted and without further negotiation. In this scenario, a contract for the supply of the services will be formed if the State signs and dates the Acceptance Statement at the end of the Quotation Form in Part G.

Warning: The Acceptance Statement should only be used as the method to form a contract if, and only if, the State accepts the quotation as submitted by the consultant without *any* further negotiation or alteration.

Warning: Because a contract can be formed by the State signing an Acceptance Statement it is important that an RFQ Consultant Services document is *never* sent to a prospective consultant as an 'unprotected' Word document.

- (2) A contract can be formed as a result of the State and the consultant entering into a formal instrument of agreement. A formal instrument of agreement should be used when there have been '*post-quotation*' negotiations or changes to the RFQ Consultant Services.

The RFQ Consultant Services template gives the agency the choice of which method of contract formation to use. If a contract is formed by the signing of the Acceptance Statement in Part G, agencies must comply with the requirements set out in clause 19 (Alternative 1) in Part E: Conditions of Quotation.

4 FIOA Consultant Services template

The FIOA Consultant Services template is for use when a contract for the supply of services is to be formed by the parties signing a formal instrument of agreement (the second alternative above). The FIOA Consultant Services template should only be used where the RFQ Consultant Services template has been used to call for quotes.

The FIOA Consultant Services template has been designed as a 'stand alone document'. It is not necessary to attach the RFQ Consultant Services document to the formal instrument of agreement.

The FIOA Consultant Services template includes a Contract Information Table. The table has been designed so that the transaction specific contract information, to the extent not varied by agreement with the consultant during any post-quotation negotiations, can be 'cut and pasted' from the Contract Information Table in the RFQ Consultant Services document issued as part of the procurement process.

The FIOA Consultant Services template also includes, in Attachment 1, the Conditions of Contract from the RFQ Consultant Services template. If you make *any* changes to the text of the Conditions of Contract in the RFQ Consultant Services template, the identical changes must be made to the Conditions of Contract in the FIOA Consultant Services template.

The FIOA Consultant Services template also includes a section (Attachment 2) to incorporate relevant '*post-quotation*' correspondence.

5 Completing the RFQ Consultant Services template

5.1 Notes about document styles

The document has been designed using specific documents styles. All of the styles in use in the RFQ Consultant Services template commence with the letters 'RFQ'. If you 'cut and paste' any text from another document into the RFQ Consultant Services template, you *must* convert that text to the appropriate RFQ style.

5.2 Important points

'Grey text' used in the RFQ Consultant Services template contain instructions to drafters on how to complete the template. All 'grey text' must be removed before the RFQ Consultant Services is issued to prospective consultants.

Do not make substantial changes to the Conditions of Quotation or the Conditions of Contract. If you need to make substantial changes, more likely than not, the template is *not* suitable for use in relation to the procurement.

5.3 Text above Part A

Users of the template need to insert in this 'part' of the RFQ Consultant Services template:

- A concise description of the services in respect of which quotations are being sought. You need to make sure that the description of the services is consistent with the description of the services to be inserted in Item 1 of the Contract Information Table.
- The name of the Department seeking quotations.

Warning: The template has been drafted for use by the State of Tasmania acting through a department. The template can be adapted for use by a corporate entity that can enter into contracts, and sue and be sued in its own name; for example, the Director of Housing, the Tasmanian Health Service, and the WorkCover Board. In this situation, the user of the template must:

- Omit the words 'THE STATE OF TASMANIA' and substitute the corporate name of the entity.
- Omit the words 'the State' wherever occurring and substitute a short form name for the entity (for example, for the Director of Housing, 'the Director').

5.4 Part A: RFQ Consultant Services Overview

Insert the Contact Officer's details.

5.5 Part B: RFQ Consultant Services Information Table

Item 1: Closing date and time for lodgement of a Quotation

Insert the closing date *and time* for lodgement of quotation (for example, '4 pm on 1 May 2012').

Item 2: Pre-quotation briefing session details

Select only one of the alternatives.

Item 3: Place and method of lodging a Quotation

Insert place of lodgement: for example - street address; email address and/or facsimile number. Method must include one electronic option for lodgment. Set out any specific requirements such as how the envelope/email/facsimile is to be marked/headed; number of copies required; electronic media required, eg copy on disk or CD; electronic format required, eg Microsoft Word, PDF, etc.

Item 4: Status of Quotation

Item 4 makes it clear that quotations constitute an offer capable of acceptance in the same way as a submitted tender. Item 4 must not be deleted or amended.

Item 5: Information to be provided by consultants as part of Quotation

This section should provide a checklist of the information to be provided by consultants (specifying required format and quantity). The requested information should enable the agency to assess the quotation and the content of same will depend on the particular requirements of the procurement together with the evaluation criteria adopted.

This may include such items as:

- evidence of capacity or capability of the consultant;
- assurance of continuity, availability and accessibility of the consultant;
- evidence of insurance ;
- references and/or referee contact details;
- details of any limit of the consultant's liability under any Scheme in force under the *Professional Standards Act 2005*;
- a declaration of any actual, perceived or potential conflict of interest and how any conflict of interest may be managed; and/or
- copies of annual reports, financial statements, quality assurance certificates, etc.

Warning: Any information listed in Item 5 will need to be repeated in the table headed 'Information/Document Description' in Part G: Quotation Form.

Item 6: Evaluation criteria

The RFQ Consultant Services template is intended for use in relation to procurements that are both low value and low risk. Accordingly, the template does not include complex evaluation criteria and there are no mandatory conditions of participation.

Where appropriate, Item 6 can be amended to include mandatory conditions of participation and specific evaluation criteria and weightings.

For example:

The State will exclude a Quotation from further consideration if the State considers that the Quotation does not satisfy any of the following mandatory conditions for participation:

[Insert any conditions for participation, eg solvency and financial viability; OH&S standards or EEO requirements; mandatory insurance policies/levels; relevant licences; professional accreditations or registrations; compliance with draft contract terms]

Quotations that meet the mandatory conditions for participation will be evaluated against the following criteria and weightings to achieve the best outcome for the Government:

[Insert relevant evaluation criteria including any weightings. Guidance information is available in the template Quotation Evaluation and Probity Plan (low risk/low value) template available from the Purchasing website (Buying for Government>Resources>Forms)]

Item 7: Notification of outcome

Insert the date by which it is anticipated that successful consultant will be notified of the outcome.

Item 8: Special Conditions form part of the Conditions of Quotation

Item 8 allows drafters to include any special conditions relevant to the procurement process. Refer to paragraph 3.2 above.

5.6 Part C: Contract Information Table

Item 1: Services to be supplied

Insert a detailed description of the Services to be supplied.

Item 2: Specifications applicable to the Services to be supplied

Insert a specification for the Services to be supplied. Where applicable, adopt an Australian standard.

Item 3: Timing for the delivery of the Services

Refer to the 'grey text' instructions embedded in the template.

Item 4: Payment of the Contract Sum

Refer to the 'grey text' instructions embedded in the template.

Item 5: Out-of-pocket expenses and disbursements

Refer to the 'grey text' instructions embedded in the template.

Item 6: Insurance

Consideration should be given to the types and levels of insurance required.

Generally, public liability insurance from a provider of consultant services is not considered necessary unless the undertaking of the services requires the Consultant to have substantial access to premises owned or leased by the Crown. If public liability insurance is required, insert the following text:

The Consultant must have a public liability insurance policy in force during the period commencing on the date of the Contract and ending on a date not earlier than 20 Business Days after the delivery of all of the Services.

In this example, no amount for insurance has been specified, which will often be appropriate in relation to procurements that are both low value and low risk.

More likely than not, professional indemnity insurance will be required. If professional indemnity insurance is required insert the following text:

The Consultant must have a professional indemnity insurance policy in force during the period commencing on the date of the Contract and ending on a date not [###] years after the completion of the delivery of all of the Services.

Drafters will need to decide the period of insurance.

Where guidance is required in relation to the type or value of insurance relevant to any particular procurement reference may be had to the Tasmanian Risk Management Fund publication, *Guidelines for Determining Appropriate Levels of Insurance for Goods and Services Contracts* which is available from the Treasury website ([Quick Links>Tasmanian Risk Management Fund>Guidelines>Contracts>Guide to Managing Insurance in Contracts](#)). Agencies may also seek advice from the Government's insurance broker, Jardine Lloyd Thompson Pty Ltd.

Item 7: Notices

Insert relevant notice details.

Warning: Note that the template does not permit the giving of notices by email.

Item 8: Special conditions forming part of the Conditions of Contract

Insert in Item 8 any relevant special conditions.

Warning: As detailed in paragraph 3.3 above, special conditions will override inconsistent provisions in the Conditions of Contract. If you insert special conditions in Item 8 consider whether the condition will operate to negate any of the terms and conditions in the Conditions of Contract. If so, OCS advice should be sought.

6 Completing the FIOA Consultant Services

6.1 Notes about document styles

As for the RFQ Consultant Services template, the FIOA Consultant Services has been designed using specific documents styles. Refer to paragraph 5.1 for information on 'cutting and pasting' text.

6.2 Details table

As for the RFQ Consultant Services template, complete the details table in the FIOA Consultant Services as required and where necessary, adapt for use by a corporate entity (refer paragraph 5.3 above).

6.3 Contract Information Table

The Contract Information Table in the FIOA Consultant Services essentially mirrors the Contract Information in the RFQ Consultant Services template, as a result, the instructions in paragraph 5.6 are generally applicable to the completion of the Contract Information Table in the FIOA Consultant Services template.

There is an important exception. The Contract Information Table in the FIOA Consultant Services includes an Item 9. This Item should be completed to show the Contract Sum payable by the State for the Services accepted by the State or agreed with the consultant during post quotation negotiations.

6.4 Signing page

If using the FIOA Consultant Services template, you will need to insert an execution clause for the consultant. A suitable execution clause should be 'copied and pasted' from the RFQ Consultant Services template.

6.5 Attachment 2

Where there are Addenda and post-quotation correspondence, insert:

The following Addenda and post-quotation correspondence forms part of this Contract:
[insert details].

If there are no Addenda and no post-quotation correspondence, insert:

No Addenda were issued by the State.

There is no post-quotation correspondence that forms part of this Contract.

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