

# TENDER TERMS AND CONDITIONS



## 1. INTRODUCTION AND OVERVIEW

### 1.1 DEFINITIONS

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The following definitions apply in this document:

**Agreement** means the contract to be entered into between the Contractor and Jemena, a draft of which is annexed to this RFT.

**Annexures** means the documents noted as annexures in this RFT.

**Amending Addenda** means documents issued by Jemena under section 2.3 to amend or clarify this RFT.

**Authorised Signature** means where the Respondent:

- (a) is a company, the company secretary and a director or two directors of the company, or a company that has a sole director who is also the sole company secretary - that director; or
- (b) is a business Joint Venture / Consortium or partnership, each party making up the Respondent; or
- (c) is a sole trading business, the proprietor.

**Business Day** means a day that is not a Saturday, Sunday or gazetted public holiday in Victoria.

**Claim** includes any claim (including for payment of money (including damages)):

- (a) under, arising out of, or in any way in connection with, the RFT; or
- (b) otherwise at law or in equity, including:
  - i. by statute;
  - ii. in tort or for negligence or otherwise, including negligent misrepresentation; or
  - iii. for restitution.

**Confidential Information** means all confidential, non-public or proprietary Information (regardless of how the Information is stored or delivered), relating to:

- (a) this RFT;
- (b) any reports, records, data and studies made or generated in the course of this RFT; and
- (c) information provided by Jemena or its Related Bodies Corporate, including any employees, existing or potential customers, contractors or agents of Jemena or its Related Bodies Corporate in relation to this RFT.

**Contractor** means the party entering into the Agreement with Jemena for the provision of the Goods and/ or Services.

**Customer** means a user of energy or water from a Jemena owned or operated energy/water transportation asset

**Goods** means the products to be supplied by the Contractor, which are the subject of this RFT and which are more particularly described in this tender.

**Jemena** means Jemena Limited and any other related Jemena entity.

**Jemena's Associates** means Jemena's employees, agents, consultants and advisers.

**Personal Information** means information or an opinion (including part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained (that is, any information that can be used to identify a person, including their name, address, telephone number or date of birth).

**Price** means the price, or the price determined by applying the formula or method, specified in the Tender, in accordance with the Price Schedule.

**Respondent** means any person who proposes to submit a Tender and each person which submits a Tender.

**RFT** means this Request for Tender for the supply of the Goods and/or Services.

**RFT Closing Date** means the date listed in table under the heading Lodgement of Tenders in the "Important RFT Information".

**RFT Documents** means the documents provide by Jemena for the purpose of obtaining a Tender, and comprise the documents detailed in section 1.3(a).

**RFT Information** means all information, documentation, plans and schedules provided by or on behalf of Jemena to the Respondents including, without limitation, the information contained in the RFT Documents, or subsequently provided to Respondents or any other person, whether orally or in documentary or electronic form by or on behalf of Jemena.

**Services** means the services to be performed by the Contractor, which are the subject of this RFT.

**Tender** means the offer submitted by Respondents in response to this RFT.

## 1.2 RFT DOCUMENTATION

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This RFT is made up of the following parts:

- (a) the Schedules, which detail the information that must be provided by Respondents to Jemena as part of a Tender; and
- (b) Annexures, which contain information to assist Respondents in preparing their Tender.

It is the responsibility of Respondents to ensure that they have received all the above listed documentation.

Should Respondents identify any discrepancy or inconsistency between the RFT Documents, Respondents must notify Jemena in writing of the details of the discrepancy or inconsistency, and Jemena will issue Amending Addenda to amend or clarify the RFT Documents, in whole or in part, if required within RFT procedures.

## 2. RFT PROCEDURES

### 2.1 RFT PROCESS

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Subject to sections 2.3, 5.3 and 5.4 below, the RFT process will be as follows:

- (a) RFT/RFQ issued;
- (b) RFT briefing held(if required) ;
- (c) enquiries / requests for information made by Respondents, if required;
- (d) Tenders lodged by RFT Closing Date;
- (e) additional information sought, if required, by Jemena;
- (f) Tenders discussed with Respondents, as required, by Jemena;
- (g) without limiting section 2.6 "successful" Contractor notified and Agreement finalised;
- (h) unsuccessful Respondents notified; and
- (i) supply under the Agreement commences

### 2.2 AMENDMENT, SUSPENSION OR DISCONTINUATION OF THIS RFT

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Jemena, in its sole and absolute discretion and without recourse from any Respondent or any other third party, reserves the right to:

- (a) amend or clarify this RFT and any of the RFT Documents at any time;
- (b) suspend the RFT process at any time; or
- (c) discontinue this RFT.

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## 2.3 AMENDING ADDENDA

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To amend or clarify this RFT in accordance with section 2.2(a), Jemena will issue Amending Addenda in identical form to each Respondent. Any Amending Addenda issued by Jemena will become part of the RFT Documents.

## 2.4 PROTECTION OF PERSONAL INFORMATION

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Jemena collects any Personal Information sought in this RFT for the purpose of determining a Respondent's suitability to provide the Goods and/ or Services. Only Jemena's Associates who are responsible for evaluating Tenders will have access to Personal Information and may use the Personal Information to verify information provided by Respondents and to identify any adverse information not disclosed in a Tender or that may affect a Respondent's ability to meet its contractual obligations.

To this end, Jemena may also use the Personal Information to obtain further information about a Respondent and/or any named individuals from publicly available records. Jemena will not disclose Personal Information to any other third party without a Respondent's consent, unless authorised or required by law. Jemena may also obtain information regarding Respondents credit history, officers and Directors from third parties, including credit reporting bodies (as defined in the Privacy Act).

It is the responsibility of Respondents to notify Jemena if their Personal Information requires updating.

## 2.5 INTELLECTUAL PROPERTY RIGHTS

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Any intellectual property rights that exist in the RFT Documents or any related material remain the property of Jemena. Respondents are permitted to use that information and material only for the purpose of compiling their Tender.

## 2.6 NO AGREEMENT CREATED

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No agreement or other legal relationship will be created in relation to this RFT until the Agreement is executed by Jemena and the Contractor.

## 2.7 RFT BRIEFING

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If required Respondents must attend a RFT briefing at which Jemena will provide an explanation of the RFT process and Jemena's requirements for the provision of the Goods and/ or Services and Respondents will be able to seek clarification of, or elaboration on, the RFT process and Jemena's requirements. Any Respondent who does not attend this mandatory briefing will not subsequently be provided with information that was provided at the briefing.

## 3. PREPARATION OF TENDERS

### 3.1 REQUESTS FOR INFORMATION

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Subject to section 2.1, Respondents may request further information or clarification of any matters in connection with this RFT. The last date for all enquiries is the final date of the tender.

All enquiries are to be posted via the tender online forum on the Jemena eProcure portal:  
<https://www.eprocure.com.au/jemena/>

Enquiries not made via the portal may not be responded to by Jemena.

## 3.2 STATEMENT OF INTERPRETATION

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If a Respondent makes a request for information under section 3.1 and is still in doubt as to the meaning of any part of this RFT, the Respondent must include a statement of the interpretation it has relied upon in preparing its Tender.

## 3.3 COMPLIANCE WITH AGREEMENT

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A Respondent must not:

- (a) provide Jemena with its own form of agreement - Jemena may, under section 5.3 below, reject any Tender containing a Respondent's own agreement; or
- (b) suggest deletion of numerous clauses in the Agreement and their wholesale replacement with a Respondent's own clauses, especially where the clauses are not directly comparable.

## 3.4 COMPLETENESS OF TENDERS

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Before submitting a Tender, Respondents must ensure that:

- (a) Tenders are in English;
- (b) RFT requirements are complied with; and
- (c) all information requested in the Schedules is provided.

Conforming Tenders must be in the form of the Schedules and in accordance with all requirements of the RFT (including, without limitation, the Schedules). Failure to comply with these requirements may render a Tender invalid for the purposes of this RFT process with the effect that Jemena may, in its sole and absolute discretion, reject the Tender.

## 4. LODGEMENT OF TENDERS

### 4.1 LODGEMENT

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Tenders lodged with Jemena may be varied by Respondents prior to the RFT closing date on eProcure. Varied Tenders must be lodged in the same manner, by the RFT Closing Date and clearly marked "Variation to Tender".

### 4.2 NOTIFICATION OF RECEIPT OF TENDERS

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After lodging a response through eProcure, an automated receipt will be emailed to the Respondent confirming receipt of the Tender from eProcure. If the Respondent does not receive this receipt from eProcure, it is the responsibility of the Respondent to address the issue with eProcure.

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## 4.3 TENDER VALIDITY PERIOD

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By lodging a Tender, Respondents offers to provide the Goods and/ or Services for the Price in accordance with the terms and conditions of the Agreement.

Tenders must remain open and valid for acceptance by Jemena for 120 days from the RFT Closing Date.

## 4.4 OWNERSHIP OF TENDERS

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Tenders submitted by Respondents will become the property of Jemena. Subject to the provisions of this RFT, Jemena may use Tenders for any purpose it deems appropriate. Tenders will not be returned to Respondents.

Jemena may copy, amend, extract or otherwise deal with all or any part of a Tender for the purpose of conducting the RFT process and related procurement processes including, but not limited to disclosing the Tender or any information contained in or relating to any Tender, to its advisers or any third parties assisting Jemena or otherwise associated with this Tender.

## 5. EVALUATION OF TENDERS

### 5.1 REQUIRED INFORMATION

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In evaluating Tenders, Jemena may require some clarification or elaboration of information supplied. Respondents must provide such additional information upon request. Any information supplied by Respondents in response to a request for information or at an interview may, at Jemena's discretion, be treated as part of their Tender.

### 5.2 REFERENCE CHECKS

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In evaluating Tenders, Jemena may visit, make telephone enquiries of or otherwise contact a Respondent's referees, or any other person or organisation, about the Respondent.

### 5.3 ACCEPTANCE AND REJECTION OF TENDERS AND OTHER RIGHTS

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Jemena, in its sole and absolute discretion and without recourse to any Respondent or other third party, reserves the right to:

- (a) reject any or all Tenders;
- (b) accept any Tender or alternative Tender even though that Tender may be less favourable to Jemena than another Tender;
- (c) waive any irregularity or non-conformance in a Tender (including the late submission of a Tender) and accept that Tender;
- (d) re-invite Tenders or extend the RFT to additional Tenderers;
- (e) extend the RFT Closing Date; or
- (f) otherwise amend or cancel the RFT process.

Jemena is not obliged to give reasons for the acceptance or rejection of a Tender.

### 5.4 NEGOTIATION WITH RESPONDENTS

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Jemena, in its sole and absolute discretion and without recourse to any Respondent or other third party, reserves

the right to negotiate with any one or more Respondents while continuing with this RFT, without negotiating with other Respondents or advising other Respondents of those negotiations.

Respondents must be prepared to enter into such negotiations upon request from Jemena.

## 6. ADDITIONAL REQUIREMENTS

### 6.1 RFT DOCUMENTS MUST BE TREATED CONFIDENTIALLY

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Respondents acknowledge and agree that all Confidential Information and information contained in this RFT and in subsequent correspondence and discussions is strictly confidential. Respondents must ensure that RFT Documents and other material and information provided by Jemena:

- (a) are stored securely;
- (b) are only used for the purposes of preparing a Tender; and
- (c) are not disclosed to any other third party for any purpose not connected with the preparation of a Tender without the prior written consent of Jemena.

### 6.2 RESPONDENTS WILL BE RESPONSIBLE FOR THEIR OWN COSTS

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Respondents acknowledge and agree that they are not entitled to any reimbursement and must not make a claim for any costs, losses or expenses of any nature suffered or incurred in relation to, or in connection with, the preparation and submission of a Tender, the RFT processes or the Respondent not being appointed.

Respondents are responsible for all costs incurred by them in participating in this RFT, including in relation to the supply of further information as requested by Jemena and/or attending meetings with Jemena.

### 6.3 RESPONDENTS MUST NOT ENGAGE IN BID RIGGING

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Respondents must not engage in improper, anti-competitive or cartel conduct, including, without limitation, by entering into a contract, arrangement or understanding with competitors, which has the purpose of rigging bids in response to this RFT. In particular, Respondents must not agree with competitors that:

- (a) some competitors will not respond to this RFT;
- (b) Respondents will respond to this RFT on the basis that one particular Tender will be more likely to succeed;
- (c) Respondents and/or their competitors will not proceed with their Tenders until the conclusion of the RFT process; or
- (d) a material component of one or more Tenders will be responded to in a particular way; or
- (e) a price is artificially inflated to make another Tender appear commercially more attractive

Respondents represent and warrant that they have no knowledge of the tender price or other commercial arrangements of any other Respondent. For the purposes of this section 6.3, rigging includes any conduct that is designed to make another Tender relatively attractive or relatively unattractive (other than a bona fide response to this RFT).

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## 6.4 RESPONDENTS MUST RELY ON THEIR OWN ENQUIRIES

- (a) Respondents are advised that, while Jemena has used its best endeavours to ensure that all RFT Information is accurate and complete, Jemena does not warrant, guarantee, make any representation or assume any duty of care or other responsibility to the Respondents with respect to the suitability, completeness, accuracy or adequacy of the RFT Information.
- Jemena and Jemena's Associates shall not be liable upon any Claim arising out of or in connection with:
- i. any error or omission from the RFT Information;
  - ii. any use of or reliance upon any RFT Information;
  - iii. any other fact, matter or thing arising out of, or in connection with, any RFT Information; or
  - iv. any failure by Jemena or Jemena's Associates to make available to the Respondents any other documentation or information for the purposes of the Services or this RFT.
- (b) Respondents must rely on their own enquiries and are responsible for verifying all information provided to them during the RFT process. In submitting its Tender, a Respondent is deemed by Jemena to have:
- i. examined and understood the RFT Documents and the RFT Information;
  - ii. read and fully understood the requirements of the Agreement;
  - iii. attended the mandatory RFT briefing (if required);
  - iv. examined all information in connection with the risks, contingencies and other circumstances relevant to the provision of the Goods and/or Services, whether provided by Jemena or otherwise obtained by Respondents; and
  - v. made any other enquiries or carried out reasonable investigations.

Respondents warrant, for the benefit of Jemena, that they have undertaken the enquiries or actions detailed in paragraphs (b)(i) – (v) above.

Respondents accept all risk arising out of their use of or reliance upon the RFT Information.

## 6.5 RESPONDENTS MUST PROVIDE WARRANTIES

In lodging a Tender, Respondents warrant, for the benefit of Jemena, that:

- (a) the information contained in their Tender is accurate and complete;
- (b) their Tender makes allowance for all matters that might impact upon their ability to provide the Goods and/or Services in whole or in part, or within any particular time, or at any particular cost, and in particular that the Price covers the costs of complying with all relevant requirements necessary for the due and proper provision of the Goods and/or Services in accordance with the terms of the Agreement;
- (c) they have not solely relied upon the RFT Information in preparing and submitting their Tender;
- (d) they have not relied upon the suitability, completeness, accuracy or adequacy of the RFT Information in preparing and submitting their Tender;
- (e) their Tender is submitted based on their own investigations, interpretations, deductions, information and determinations;

- (f) they have, and will maintain, the necessary skills, qualifications and experience to enable them to provide the Goods and/or Services in accordance with the Agreement;
- (g) they have obtained, or will be able to obtain, all consents, permits authorities and licences (or other necessary authorisations) necessary for them to provide the Goods and/or Services;
- (h) they are not insolvent and there is no unfulfilled or unsatisfied judgement or court order outstanding against them and they are not aware of any court proceeding or action (including pending or potential proceeding or action) that would affect their ability to successfully supply/performance the Goods and/or Services and comply with its obligations under this RFQ and the Agreement; and
- (i) without limiting section 6.4, they have not relied upon any warranty or representation made by or on behalf of Jemena except as expressly provided for within this RFT;
- (j) they will make no Claim against Jemena or Jemena's Associates in relation to the selection of a Contractor or any other matter in connection with this RFT or the process contemplated by this RFT and hereby release Jemena and Jemena's Associates from all such Claims (whether arising before, on or after the date of this RFT);
- (k) they have complied with section 6.3; and
- (l) the Tender is a bona fide tender submitted for the purpose of winning the opportunity to provide the Goods and/or Services.

## 6.6 RESPONDENTS MUST INDEMNIFY JEMENA FOR ANY BREACH OF WARRANTIES

In the event of a breach of the warranties given in sections 6.4 and 6.5, Respondents indemnify and will keep indemnified Jemena and Jemena's Associates in respect of any loss, damage, expense, suit, proceeding or cost which may be suffered or incurred by Jemena or Jemena's Associates.

Respondents release Jemena and Jemena's Associates from any Claim Respondents have, or would have, against Jemena or Jemena's Associates in relation to or in connection with this RFT, the consideration of Tenders or the awarding of the Agreement (including any Claim arising from any breach of this RFT, negligence, default or lack of care by Jemena). Respondents indemnify and will keep indemnified Jemena and Jemena's Associates against any Claim which is the subject of the release provided for in this section.