

## 1 INTRODUCTION

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TAFE NSW seeks Proposals for the supply of goods or services for a period detailed in the Sourcing Event and under the terms as set out in the Proposed Contract.

## 2 SOURCING EVENT STRUCTURE

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Any changes to these Terms of Participation for a specific Sourcing Event are contained in the Sourcing Event documents and will only apply to the specific Sourcing Event.

## 3 SOURCING EVENT TIMETABLE

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Except for the Closing Date and Time, any timetable provided within the Sourcing Event is to be used as a guide only. TAFE NSW reserves the right to vary the timetable and the nature and number of activities in its sole discretion without notice to Respondents.

## 4 EVALUATION CRITERIA

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Proposals will be evaluated by determining the best value for money having regard to the price and non-price criteria summarised within the Sourcing Event. The criteria are not listed in any particular order of importance and are not necessarily of equal weight. TAFE NSW will undertake the Evaluation Process as per the information available in clause 8.

## 5 COMMUNICATIONS DURING THE SOURCING EVENT PROCESS

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### 5.1 SOURCING EVENT MANAGER

All communications relating to this Sourcing Event must be in writing and submitted to the Sourcing Event Manager, as noted in the Sourcing Event.

### 5.2 RESPONDENT CONTACT PERSON

The Respondent must nominate a contact person who will be the only person authorised to contact (and be contacted by) the RFP Manager. The Respondent must not otherwise initiate contact with TAFE NSW or any of its staff or advisers in relation to the Proposal.

### 5.3 REQUESTS FOR CLARIFICATION OR FURTHER INFORMATION

Any questions or requests for further information or clarification of this Sourcing Event should be made before the Enquiry Cut-off date and time. If a Respondent finds any discrepancy, error or omission in this Sourcing Event or other information issued by TAFE NSW in respect of the Sourcing Event, the Respondent should notify the Sourcing Event Manager immediately through the messaging facility in SAP Ariba.

TAFE NSW reserves the right to not respond to any questions or requests received after the Sourcing Event Enquiry Cut-off.

Any response to enquiries will be provided to all Respondents via an Addendum unless they are considered commercial in confidence as determined by TAFE NSW. TAFE NSW will not reveal the identity of the Respondent that initiated the enquiry in any such communications.

## 5.4 RESPONDENT BRIEFING

Refer to the Sourcing Event for details of respondent briefings.

## 5.5 MANDATORY BRIEFING

Respondents must attend the Mandatory Briefing to be eligible to participate in the Sourcing Event if one is required as part of the Sourcing Event. Any Proposal received from a Respondent that did not attend the Mandatory Briefing will be excluded from the evaluation process.

## 6 SOURCING EVENT

### 6.1 NO LEGAL RELATIONSHIP

This Sourcing Event does not create any legal relationship and is not a recommendation, offer or invitation to enter into a legal relationship, contract, agreement or other arrangement in respect of the goods or services the subject of this Sourcing Event. Nothing in this Sourcing Event or in considering the Respondent's Proposal obliges TAFE NSW to enter into any agreement with the Respondent, creates a "process contract" or other implied contract, obliges TAFE NSW to consider or accept any Proposal, stops TAFE NSW from considering a non-conforming Proposal, or prevents TAFE NSW from changing the way it manages this Sourcing Event or evaluates Proposals.

Without limiting the foregoing, the Code of Conduct and Ethical Practices and the Procurement Policy Framework are statements of policy only and do not give rise to any legally enforceable obligations on the part of TAFE NSW.

### 6.2 COSTS OF PARTICIPATION

Participation in any stage of this Sourcing Event process, or in relation to any matter concerning the Proposal, will be at the Respondent's sole risk. All losses, liabilities, damages, costs, charges and expenses incurred by the Respondent (or its employees, agents, contractors or advisors associated with this Sourcing Event) will be borne entirely by the Respondent and TAFE NSW will not under any circumstances compensate the Respondent for such costs.

### 6.3 CHANGES TO THE SOURCING EVENT PROCESS

The processes and procedures set out in this Sourcing Event represent how TAFE NSW currently intends to conduct this Sourcing Event. However, TAFE NSW will not be under any legal obligation to conduct this Sourcing Event in that manner and TAFE NSW may change the procedures set out in this Sourcing Event from time to time in its sole discretion. TAFE NSW will generally try to notify Respondents of any material changes that may affect Respondents but will not necessarily provide reasons.

Without limiting the previous paragraph, TAFE NSW reserves the right, in its absolute discretion, to do all or any of the following at any stage of the Sourcing Event process:

- a) change the format, structure or timing of the Sourcing Event process;
- b) change the scope or requirements of the Deliverables;
- c) vary, amend, suspend or terminate the Sourcing Event process or Respondent participation in it; or
- d) evaluate any alternative or non-conforming or partially conforming Proposal.

## 6.4 ALTERNATIVE PROPOSALS

TAFE NSW may, at its discretion, consider Proposals offering alternative solutions or processes to those requested in this Sourcing Event on the condition that the Respondent proposing the alternative solution:

- a) demonstrates that the alternative solution may be more beneficial to TAFE NSW than the requirements specified in this Sourcing Event and will deliver the outcomes sought by TAFE NSW;
- b) justifies, with supporting data, the proposed alternative solution including the advantages, disadvantages, limitations and capabilities of the alternative solution; and
- c) also provides a Proposal that conforms to the requirements specified in this Sourcing Event.

## 6.5 ADDENDA

TAFE NSW reserves the right to vary this Sourcing Event (including the variation of any dates or timeframes referred to in this Sourcing Event) by issuing an addendum to Respondents. Each addendum will form part of this Sourcing Event documents, and all addenda must be addressed and incorporated into each Proposal. It is the responsibility of Respondents to verify if any addendum has been issued. Where an addendum has been issued after the Respondent has lodged its Proposal, the Respondent should update its Proposal and resubmit the updated Proposal in accordance with TAFE NSW's instructions.

## 7 PROPOSALS

### 7.1 PROPOSAL CONTENT

Respondents must respond to all mandatory fields within the Sourcing Event.

Proposals must be in English, be clear, concise and relevant, and be free of irrelevant marketing material or any other superfluous or irrelevant material.

All times must be in the current New South Wales local time. Pricing must be in Australian dollars (AUD) excluding GST and pricing terms must comply with Delivered Duty Paid (DDP) (Incoterms 2010), unless otherwise set out in this Sourcing Event.

In completing the Proposal, Respondents must not change any pre-existing text in the Returnable Schedules other than to insert the required information.

Respondents should fully inform themselves in relation to all matters arising from this Sourcing Event, and must clearly identify and detail all assumptions, qualifications and dependencies upon which their Proposal is based. Respondents must also inform TAFE NSW how such assumptions, qualifications and dependencies are proposed to be eliminated. If no assumptions, qualifications and dependencies are identified, the Proposal will be deemed to have none.

### 7.2 LODGEMENT

Proposals must be submitted no later than the Closing Date and Time requested. Proposals must be submitted electronically via the TAFE NSW Ariba solution. Such Proposals will be treated in accordance with the *Electronic Transactions Act 2000* (NSW).

Respondents must note that TAFE NSW will not be responsible for any loss, damage or corruption of electronically submitted Proposals.

## 7.3 LATE PROPOSALS

Respondents are solely responsible for ensuring that their Proposal is submitted in accordance with this Sourcing Event requirements prior to the Closing Date and Time. Proposals received after the Closing Date and Time may be considered to be late Proposals. In accordance with the Procurement Policy Framework, late Proposals will not be accepted, except where TAFE NSW determines (but without any obligation to do so), in its absolute discretion, that the late Proposal was beyond the reasonable control of the Respondent or due to any acts or omissions of TAFE NSW and where the integrity and competitiveness of the Sourcing Event process will not be compromised by accepting a late Proposal.

## 7.4 EXTENSIONS

TAFE NSW may extend the Closing Date and Time at its sole discretion. Respondents may request an extension in writing to the Sourcing Event Manager, providing a reason for the request, but TAFE NSW is under no obligation to grant such extension.

## 7.5 PROPOSAL VALIDITY

The pricing and proposed terms set out in a Proposal will be deemed to remain valid and open to acceptance for at least the Proposal Validity Period outlined in the Sourcing Event. The Proposal Validity Period may be extended by mutual agreement between TAFE NSW and the Respondent.

## 7.6 ERRORS IN PROPOSAL

If TAFE NSW considers that there are unintentional errors of form in a Respondent's Proposal, TAFE NSW may, but is not required to, request the Respondent to correct or clarify the error but TAFE NSW will not permit any material alteration or addition to the Proposal that would improve it.

If, after a Respondent's Proposal has been lodged, the Respondent becomes aware of an error in the Proposal (excluding clerical errors which would have no bearing on the evaluation of the Proposal) the Respondent must promptly notify TAFE NSW of such error.

# 8 EVALUATION OF PROPOSALS

## 8.1 EVALUATION PROCESS

Following the Closing Date and Time, TAFE NSW intends to evaluate the Proposals received based on the evaluation criteria outlined in the Sourcing Event. TAFE NSW may decide, at its absolute discretion, to consider or refuse to consider, any non-conforming Proposal. A non-conforming Proposal includes Proposals that:

- a) do not comply with the requirements of this Sourcing Event;
- a) are incomplete, ambiguous or illegible, or
- b) contains insufficient information to enable proper evaluation.

TAFE NSW will not necessarily accept the Proposal offering the lowest price.

If applicable (see clause 9.2), the Respondent's SME Participation Plan will be an evaluation criterion.

## 8.2 CLARIFICATIONS, PRESENTATIONS AND INTERVIEWS

TAFE NSW may request Respondents to submit additional information or clarify Proposals during the Sourcing Event process and seek revised offers, in the form of BAFOs or otherwise, from Respondents at any time after the Closing Date and Time.

In evaluating Proposals TAFE NSW may, in its sole discretion, take into account information that it obtains in addition to any information contained in a Proposal in relation to a Respondent.

In addition to a clarification of Proposals and requesting BAFO or otherwise, TAFE NSW may request some or all Respondents in writing to:

- a) conduct presentations or briefings; and/or
- b) make selected human resources nominated by Respondents available for interviews.

### 8.3 SUCCESSFUL PROPOSALS

Selection of a successful Respondent does not give rise to a contract (express or implied) between the successful Respondent and TAFE NSW for the supply of Goods or Services. No legal relationship will exist between TAFE NSW and a successful Respondent for the supply of Goods or Services until a binding contract is executed by them. The Successful Respondent will be required to enter into a contract based on the Proposed Contract. TAFE NSW may require the execution of this Contract using DocuSign.

Alternatively, TAFE NSW may, in its absolute discretion, decide not to enter into pre-contractual negotiations with the successful Respondent and issue a letter of acceptance on the basis of the Proposal on the terms of the Proposed Contract.

TAFE NSW is under no obligation to appoint a successful Respondent or enter into a contract with a successful Respondent or any other person in relation to this Sourcing Event.

Purchase Orders and associated invoicing as part of a successful award will be conducted through the SAP Ariba network. Successful suppliers are expected to join the SAP Ariba network for the conduct of post-award business.

### 8.4 ADVICE TO RESPONDENTS AND DEBRIEFING

TAFE NSW does not intend commenting on or disclosing the progress of the evaluation of Proposals prior to giving formal final notice of the outcome of the Sourcing Event.

Unsuccessful Respondents may email the Sourcing Event Manager, request a debriefing. A debriefing will be provided to the relevant Respondent providing information on why its Proposal was not successful.

TAFE NSW will not provide any information comparing a Respondent's Proposal against the successful Proposal nor will TAFE NSW release the names or scores of other Respondents or any other information about other Proposals other than the name of the successful Respondent(s).

## 9 GENERAL

### 9.1 COMPLIANCE WITH POLICY

Respondents must comply with:

- a) all supplier obligations in the [Procurement Policy Framework](#) that is current at the date of this Sourcing Event,
- b) [TAFE NSW Code of Conduct and Ethical Practices](#), and
- c) [TAFE NSW Statement of Business Ethics](#)

Compliance with the Procurement Policy Framework and the TAFE NSW Code of Conduct and Ethical Practices are essential requirements of this Sourcing Event.

A Respondent's failure to comply with this clause during the Sourcing Event process will be taken into account by TAFE NSW during the Proposal evaluation process and TAFE NSW may pass over the Respondent's Proposal without prejudice to any other rights of action or remedies available to TAFE NSW.

## 9.2 NSW GOVERNMENT SMALL AND MEDIUM ENTERPRISE AND REGIONAL PROCUREMENT POLICY

The [NSW Government Small and Medium Enterprise and Regional Procurement Policy](#) is a key NSW Government procurement reform. This policy improves access by small to medium enterprises (SMEs) to government goods and services procurement by opening up opportunities. It supports competition and reduces the administrative burden on SMEs. If applicable, the Respondent must complete an SME Participation Plan and include it in the Proposal.

## 9.3 INTELLECTUAL PROPERTY RIGHTS IN THIS SOURCING EVENT

All Intellectual Property Rights in this Sourcing Event and any documents provided to Respondents as part of the Sourcing Event process are owned by and will remain the property of TAFE NSW and its licensors. TAFE NSW gives Respondents no rights in this Sourcing Event or the Information Documents. Respondents must not copy, use or otherwise deal with this Sourcing Event or the Information Documents, except as reasonably necessary for Respondents to respond to this Sourcing Event unless TAFE NSW gives prior written consent.

## 9.4 INTELLECTUAL PROPERTY RIGHTS IN PROPOSAL DOCUMENT AND LICENCE TO USE

Upon submission in accordance with the requirements of this Sourcing Event, all Proposals (whether in paper or electronic form) will become TAFE NSW property.

Respondents (or their licensors) will retain all Intellectual Property Rights contained in the Proposals. Each Respondent grants to TAFE NSW a royalty-free, perpetual and irrevocable licence to use, copy, reproduce, adapt and modify their Proposal for any purpose related to the Sourcing Event, including evaluating Proposals and the preparation of associated agreements.

TAFE NSW will retain copies of Proposals, evaluation information and other materials as required by TAFE NSW or NSW Government policies and processes.

## 9.5 TAFE NSW CONFIDENTIAL INFORMATION

TAFE NSW's confidential information includes all information contained in this Sourcing Event or subsequently provided by TAFE NSW other than information which is or becomes public knowledge (unless through a breach of confidentiality by the Respondent).

Respondents may disclose TAFE NSW confidential information to their employees, agents, contractors and advisors strictly on a need to know basis and solely for evaluating the contents of this Sourcing Event, preparing a Proposal and negotiating any resulting contract. Respondents must, in respect of TAFE NSW confidential information, obtain from the recipients, and provide to TAFE NSW, an executed confidentiality undertaking in favour of TAFE NSW. Confidentiality undertakings are available from the Sourcing Event Manager on request.

Respondents are also permitted to disclose TAFE NSW confidential information to the extent required by law. However, prior to any such disclosure the Respondent must notify TAFE NSW in writing and allow, to the extent legally possible, a reasonable period for TAFE NSW to consider whether they wish to require the Respondent to challenge the grounds for the disclosure or seek conditions to be placed on the disclosure.

Respondents must not otherwise use or disclose TAFE NSW confidential information.

Respondents may not make any announcement or release any information regarding this Sourcing Event (including that it has been sent to Respondents) without TAFE NSW's prior written consent.

TAFE NSW may require Respondents to return or destroy all copies of this Sourcing Event and any other confidential information TAFE NSW has provided to Respondents. Respondents must promptly comply with this request and provide a written certification of destruction (if so directed in writing).

## 9.6 RESPONDENT CONFIDENTIAL INFORMATION

Respondents should clearly identify any confidential information they have provided as part of their Proposal, including information about the Respondent and its products, goods, services and customers. Such information will not be confidential if TAFE NSW already knows the information, it is public knowledge or TAFE NSW has already obtained the information on a non-confidential basis.

Respondents must not mark the whole or substantially the whole of their Proposal as confidential. Respondents must not claim confidentiality for any part of Proposal which is not genuinely confidential.

TAFE NSW shall in good faith appropriately secure and safeguard all Respondent's provided documentation and shall keep all declared confidential information confidential. Respondents agree that TAFE NSW may disclose any information in their Proposals (including advisors on a need to know basis and for the purpose of evaluating or clarifying a Proposal or negotiating any resulting contract).

If there is any conflict or inconsistency between TAFE NSW's obligations of confidentiality to the Respondent and TAFE NSW's obligations of disclosure, as referred to in clause 9.7 below, TAFE NSW's obligations of disclosure shall prevail to the extent of the conflict or inconsistency.

## 9.7 DISCLOSURE OF DETAILS OF TAFE NSW CONTRACTS

Notwithstanding any provision of this document, TAFE NSW may disclose any information in a Proposal and any resulting contract to the extent that TAFE NSW is required to do so by law, including under the *Government Information (Public Access) Act 2009* (NSW) or by a valid requirement of a government agency. TAFE NSW's disclosure obligations may change over time, but Respondents should be aware that TAFE NSW may be required to disclose the following types of information:

- a) the name and business address of the Contractor and details of any related bodies corporate that will be involved in carrying out the obligations of the Contractor under any contract resulting from this Sourcing Event;
- b) in relation to this Sourcing Event, the method of submitting Proposals and a summary of the criteria against which the various Proposals were assessed by TAFE NSW;
- c) details of any resulting contract from the Sourcing Event process (including a description of the goods/services to be provided, commencement date of the resulting contract, the term of the resulting contract, and a description of any provisions in the resulting contract which may be subject to variation or renegotiation); and
- d) the price payable by us under the resulting contract and the basis for future changes in this price.

Detailed information about the disclosure obligations of NSW government agencies is set out in the guidelines published by the Information and Privacy Commission.

## 9.8 EXCHANGE OF INFORMATION BETWEEN GOVERNMENT AGENCIES

By lodging a Proposal the Respondent authorises TAFE NSW to make information available, on request, to any NSW government agency. This includes information dealing with the Respondent's performance on any prior contract that has been awarded. Such information may be used by the recipient NSW Government agency for assessment of the suitability for pre-qualification, selective tender lists, expressions of interest or the award of a contract.



The provision of the information by TAFE NSW to any other NSW Government agency is agreed by the Respondent to be a communication falling within section 30 of the *Defamation Act 2005* (NSW), and the Respondent shall have no claim against TAFE NSW or the State of New South Wales in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the Respondent arising out of the communication.

### **9.9 NO COLLUSION**

In preparing a Proposal, Respondents must not communicate (verbally or otherwise), have any arrangement or arrive at any understanding with any other Respondent concerning the Sourcing Event. Respondents must not engage in practices that might be regarded as collusive or anti-competitive.

### **9.10 DISCLAIMER**

This Sourcing Event contains statements based on information or data that TAFE NSW believes to be reliable as at the date of publication. TAFE NSW makes no representation or warranty, express or implied, as to the accuracy or completeness of any information or data or statement given or made in this Sourcing Event. Respondents are responsible for forming their own independent judgements, interpretations, conclusions, and deductions about any information or data in this Sourcing Event, and Respondents should examine all information relevant to the risks, contingencies and other circumstances that could affect their Proposal. TAFE NSW will not be liable to Respondents if Respondents rely on any information or data in this Sourcing Event.

### **9.11 RELIANCE ON STATEMENTS**

TAFE NSW may rely on any statements made by Respondents (including their employees, contractors, advisors and agents). The statements TAFE NSW may rely on include those contained in Proposals, those made in any written or verbal communications and in any negotiations with TAFE NSW. If TAFE NSW believes any Respondent has made any false or misleading statements, TAFE NSW may in its absolute discretion exclude the relevant Proposal from the evaluation process at any time.

### **9.12 UNLAWFUL ACTS AND IMPROPER ASSISTANCE**

Respondents (and their employees, contractors, advisers and agents) must not offer any form of inducements to TAFE NSW or exhibit undue pressure (including any duress) on TAFE NSW, its employees or advisors in connection with this Sourcing Event process. TAFE NSW may exclude a Proposal from consideration where TAFE NSW believes it has been compiled using information improperly or unlawfully obtained from TAFE NSW or with the improper assistance of any person currently or previously associated with TAFE NSW.

### **9.13 PRIME CONTRACTOR, SUBCONTRACTORS AND SUPPLIERS**

Where the involvement of another party or parties will provide a more substantial and complete solution for TAFE NSW, the Respondent may involve that other party or parties in proposing that solution. The Respondent should disclose the nature of the relationship with the other party or parties to TAFE NSW and the Proposal must include the details as specified in the Sourcing Event.

If the Respondents Proposal is successful, TAFE NSW will require the Respondent to contract as prime contractor to provide all of the Goods and Services the subject of this Sourcing Event (or, if this Sourcing Event expressly allows the Respondent to submit a proposal for part of the Goods and Services, then the part that the Proposal covers). If there are other parties involved that the Respondent has disclosed to TAFE in the Proposal, then the Respondent may be required to subcontract with those parties and will be responsible for the performance of those parties.

### **9.14 PIGGYBACKING**

If a public sector service agency (as defined in the *Public Sector Employment and Management Act 2002*) requests the successful Respondent to provide goods or services to it similar to the goods or services the subject of this Sourcing



Event then the successful Respondent agrees that if it enters into a separate agreement with that other agency the terms will be no less favourable than the terms in its Proposal having regard to any necessary changes (including scope and service levels).

## 9.15 PRECEDENCE OF DOCUMENTS

If there is any inconsistency between this clause 9 of the Sourcing Event and any of the other sections or attachments, then the terms of this clause 9 will prevail to the extent of that inconsistency.

## 9.16 COMPLAINTS PROCEDURE

It is the NSW Government's objective to ensure that industry is given every opportunity to win Government contracts. Should any entity feel that it has been unfairly excluded from a quotation or unfairly disadvantaged by the Agreement or the Scope of Works, it is invited to write to the GM Procurement TAFE NSW: ProcurementServices@tafensw.edu.au.

## 10 DEFINITIONS

Definition of common terms used within this Sourcing Event.

**Best and Final Offer or BAFO** means best and final offer in relation to all or certain aspects of a Proposal.

**Closing Date and Time** means the closing date and time as set out in the Sourcing Event.

**Conflict of Interest** means, whether at an individual or entity level, any situation occurring where there is a reasonable expectation of direct benefit or loss (whether financial or non-financial) for an individual or entity with a particular interest that could be influenced, or appear to be influenced, in favour of that interest, in the performance of their duties.

**Contractor** means the Respondent that is selected by TAFE NSW to perform/deliver the Goods or Services as a consequence of this Sourcing Event.

**Deliverables** means the Goods or Services described in the Scope of Works.

**DocuSign** refer to <https://www.docusign.com.au>

**Fees** means the charges and rates that are set out in the Sourcing Event.

**Goods** means any goods described in the Scope of Works.

**Intellectual Property Rights** means any industrial and intellectual property rights throughout the world, including any copyright, invention, patent, design, trade mark, service mark, domain name, trade secret, know-how, confidential information, circuit layouts, database or anything copied or derived from them.

**Proposal** means a response to this Sourcing Event submitted by a Respondent.

**Proposed Contract** means the proposed contract set out in this Sourcing Event.

**Sourcing Event** means this request for proposal.

**Respondent** means a supplier that submits a Proposal in response to this the Sourcing Event and includes the Respondent's related bodies corporate, employees, agents and contractors.

**Sourcing Event Enquiry Cut-off** means the date and time by which any enquiries and clarifications may be made to TAFE NSW.

**Scope of Works** means the scope of goods and services set out in this Sourcing Event.

**Services** means any services described in the Scope of Works.



**SME Participation Plan** means a plan demonstrating how a Respondent proposes to support local industry, including jobs, skills and capability development for SME's where the procurement is valued at \$10 million and above. An SME Participation Plan template is available to download at <https://www.procurepoint.nsw.gov.au/policy-and-reform/goods-and-services/small-and-medium-enterprises-policy-framework>

**TAFE NSW** means Technical and Further Education Commission trading as TAFE NSW Corner Harris St and Mary Ann St, Ultimo NSW 2007 acting for and on behalf of the Crown in right of the State of New South Wales ABN 89 755 348 137

**Tender** the terms tender, proposal or response are used interchangeably and have the same meaning.