Public Art Commissioning Brief

City Gateway Project

Shellharbour City Council is committed to implementing initiatives which will make the city a dynamic and vibrant place where creativity thrives. Council is seeking to acquire two new permanent artworks to enhance the north and south gateways into Shellharbour City.

Project Summary	
Commission	City Gateway Statement Artworks (2)
Location	North Gateway and South Gateway
Audience	Residents, workers and visitors to Shellharbour City
Artwork budget	$75, 000 (excluding gst)
EOIs close	Sunday 10 October, midnight

Introduction

With the imminent completion of the Albion Park Rail Bypass, new and replacement statement gateway signage is to be installed as motorists enter the LGA from both the north and the south along the motorway.

The intent of the signage is to welcome motorists to the Shellharbour Local Government Area and is to be a statement piece.

Opportunity for Artists

Shellharbour City Council is calling for Expression of Interest from artists interested in creating a sculptural, or other, public artwork that will be a statement piece for residents and visitors. The artwork should be unique in design and contemporary in style; have conceptual links to the surrounding area; and should reflect the local context, its people, and the unique place of each site.

We are seeking one artist to create two (2) signs: North Gateway and South Gateway.

Artists from local areas, and who identify as First Nations, are strongly encouraged to apply.

Artist Brief

This public art commission aims to create an artwork that is reflective of, and valued by the local community, businesses, and visitors. We encourage submissions that will create a genuine and meaningful ‘gateway’ artwork, connect, and inspire the community and enrich the area through a visual celebration of place.

Key Outcomes

The artwork should respond to the below aims:

- Respond to the unique characteristics of site, place and people;
- Be visually bold and/or vibrant (this may be achieved through colour, design and/or form);
- Demonstrate artistic excellence in concept and design and fabrication;
- Be visually appropriate and suitable for a work in the public domain;
- Utilize materials and elements that are safe, robust and easy to maintain;
- Be consistent with NSW Government guidelines for artwork near major roads, noting concept approval will be required;
- Be durable in materials and appropriate for extended outdoor display (15+ years) in all weather conditions;
- Artwork must have an engineering certification for the installation of the artwork.

About Shellharbour City

Shellharbour City is in the Illawarra Region of New South Wales, about 100 kilometres south of the Sydney CBD. Shellharbour is positioned between the picturesque Illawarra Escarpment and the waters of the Tasman Sea.

Transport for NSW is building an extension of the M1 Princes Motorway between Yallah and Oak Flats to bypass Albion Park Rail. The bypass would complete the 'missing link' for a high standard road between Sydney and Bomaderry. Motorists are expected to be driving on the new motorway by mid-2021, with the project on track for completion in late 2021. - *Transport for NSW*

The Site

The northbound gateway sign is to be positioned near the Princess Motorway as pictured below.

Princes Motorway northbound gateway sign

The exact location of the southbound gateway sign is still to be determined as the site currently exists as a construction site.

General location of southbound Gateway sign – subject to confirmation from Peter Hawkins

Scale

As a guide, the artwork may be similar in scale to the piece along the Princess Highway at Berry, or as budget would allow. Height *should not* exceed 6 meters.

Budget

The total budget for this project is $75,000 (excluding gst). This is inclusive of:

Artist fee
Research and development of concept and project plan including project meetings and updates with key Council staff
All costs associated with design and fabrication including materials, consultancies, transportation, installation, insurances, etc
Equipment hire, equipment assemble, traffic and pedestrian management (if required)
Site establishment, temporary perimeter fence, temporary site access (if required), disposal of any excess soil and waste
Accommodation and travel (if required)
Artist statement
Provision of warranties (minimum 15 years) and maintenance manual

Certifying the artworks installation and compliance with all relevant Australian Standards
Independent engineering and certification

There is no contingency within this project, and it is therefore the artist's responsibility to stringently conduct works within the allocated budget.

Draft Project Schedule

Expression of interest due	10 October 2021
Artist Engaged (3 weeks)	1 November 2021
Detailed design development due (6 weeks)	12 December 2021
Feedback due (1 week)	20 December 2021
Fabrication completed (21 weeks)	22 May 2022
Installation complete (3 weeks)	12 June 2022
Submission of maintenance plan (3 weeks)	30 June 2022

The selected artist will be required to consult and liaise with council staff and undertake regular updates to Council as required. The project concept must be practical and achievable within the time schedule, although an agreement may be made with the successful artist to negotiate the final installation date if necessary.

Artist Responsibilities

Council requires the artist to:

- Coordinate the project within the agreed schedule and budget;
- Undertake the development and design of the artwork;
- Coordinate the development and installation of the artwork within the timeframes and budget allocated;
- Develop and deliver the project in line with best practice community cultural development principles while undertaking consultation, research, creative development and design;
- Ensure that the artwork and its installation complies with Council's risk management, safety and construction standards, processes and procedures and relevant Australian Building Standards
- Ensure that the artwork is suitable for the site with regard to materials, maintenance and public safety
- Hold 'Australia Wide' or 'World Wide' public liability insurance (minimum cover $10 million)

- Comply with Council's relevant Policies and Procedures, including Code of Conduct.
- The artwork should also be guided by the ambitions, standards and actions outlined in Council's Public Art Strategy: https://www.shellharbour.nsw.gov.au/things-to-do/arts-andculture/public-art-strategy

Intellectual Property Rights

Copyright in all artworks created and/or exhibited during the contract will remain the property of the Artist. The Artist shall give Council a fixed term, exclusive licence to exhibit the artworks for the purposes, and term, of the project and Council retains the right to document and/or reproduce the work for related non-commercial purposes including publicity and promotion of the project, education and record keeping.

Wherever Council reproduces images of the artwork, Council will acknowledge the Artist as the creator of the Artwork and recognise the Moral Rights of the Artist in accordance with the Copyright Act 1968.

Privacy

Shellharbour City Council always respects your privacy. The information collected for this application will be used for the purpose of assessing your submission, subject always to the *Government Information (Public Access) Act 2009 (NSW)*. For more information, please see our Privacy Management Plan on our website www.shellharbour.nsw.gov.au or contact our Privacy Officer on 02 4221 6111.

Applications

Interested artists are invited to submit an Expression of Interest for this project. Your submission should provide the following:

- Written description of artistic approach and style including relevance to site and brief, approximate scale and material (maximum 250 words)
- Sketches, drawings or other images to accompany and provide context/detail to the written statement
- Detailed project budget including design, fabrication and installation costs
- Portfolio of previous projects completed
- Project history and up to date biography including the contact details of two referees.

Priority may be given to local artists listed on our online artist directory *Weave. (Please contact arts@shellharbour.nsw.gov.au if you wish to sign up to this directory)*

Expression of Interest submissions are to be received at the email address below by **midnight Sunday 10 October, 2021.** Late submissions will not be considered.

All submissions to:

E arts@shellharbour.nsw.gov.au

Selection Criteria

A shortlist of artists that best meets the objectives set out in this document will be assessed by Shellharbour City Council. Final designs will require approval by Shellharbour City Council.

An Expression of Interest will be assessed on the below criteria:

- Artistic merit and conceptual integrity
- Relevant experience, quality of previous projects and technical capabilities
- Response to site and project brief
- Demonstration of thought given to durability and safety
- Feasibility of the project within the timeframe and budget
- Appropriateness' of the location context

Contract

The successful applicant will be contracted under a Memorandum of Understanding. A copy of this agreement will be provided to applicants on request.

Enquiries

All enquiries should be directed to:
Carmelina Nunnari, Arts and Cultural Development Officer

P 02 4221 6351

E arts@shellharbour.nsw.gov.au

Further references

There are several valuable points of interest that may assist in your design and implementation:

Shellharbour Images
Wildlife in Shellharbour
Birdlife
Shellharbour City Council Public Art Strategy

Conditions of the Expression of Interest (EOI)

Expression of Interest Title **EOI 2021/ City Gateway Project**

Expression of Interest Number **EOI 2021/ 09**

Issue Date **10 September 2021**

Expression of Interest Closing Time and Lodgement Details	
Expression of Interest Closing Date:	Sunday 10 October
Expression of Interest Closing Time:	12:00pm midnight
Expression of Interest Lodgement:	Responses are to be submitted via email to arts@shellharbour.nsw.gov.au

Contact Details – General Enquiries	
Contact's Name:	Carmelina Nunnari via arts@shellhabour.nsw.gov.au

Table of Contents

Table of Contents 10

1. Introduction 12

1.1 Purpose of this Conditions of the Expression of Interest (EOI) 12

1.2 Contact Officers 12

1.3 Details of Conditions 12

1.4 Definitions 12

2. Terms and Conditions 14

2.1 How to Prepare Your Expression of Interest Response 14

2.2 Amendments to the Request/Council Rights 14

2.3 Clarification of the Request 14

2.4 Respondents to inform themselves 15

2.5 Submissions 16

2.6 Lodgement of Submissions and Delivery Method 16

2.7 Conditions of Electronic Submission 16

2.8 Acceptance of Submissions 16

2.9 Rejection of Submissions 17

2.10 Late Submissions 17

2.11 Evaluation Methodology 17

2.12 General Evaluation Considerations 17

2.13 Mandatory Participation Criteria 18

2.14 Evaluation Criteria 18

2.15 Financial Capacity 18

2.16 Alternative or Non-Conforming Submissions 19

2.17 Departures, Clarifications and Assumptions 19

2.18 Submission Validity Period 19

2.19 Variation of Submission 19

2.20 Identity of the Respondent 20

2.21 Submitted Price 20

2.22 Conditions of Contract 20

2.23 Precedence of Documents 20

2.24 Ownership of Submissions 20

2.25 Registration or licensing of Contractors 20

2.26 WHS Obligations 21

3. Participation in the Expression of Interest Process 22

3.1 Jurisdiction 22

3.2 Costs of Submission 22

3.3 Canvassing of Officials 22

3.4 Confidentiality 22

3.5	Statement of Business Ethics	22
3.6	GIPA Requirements (where relevant)	23
3.7	Non Collusion	23
3.8	Publicity	24

1. Introduction

1.1 Purpose of this Conditions of the Expression of Interest (EOI)

This document is intended to provide Respondents with Information on the requirements and Council arrangements for the submission and evaluation of EOIs.

1.2 Contact Officers

Respondents should not seek information from any person(s) or rely on any information provided by any person(s) other than the Contact Officers on the front page of this document. To directly contact any person other than the Contact Officer may eliminate a Respondent from the EOI or may be a termination event pursuant to the Contract.

1.3 Details of Conditions

Respondents must comply with Council's Terms & Conditions of EOI, which are set out in section 2 of this document.

Lodgement of an Expression of Interest is evidence of the Respondent's agreement to comply with the Terms & Conditions of EOI for the duration of any contract awarded as a result of the Expression of Interest process. If a Respondent fails to comply with the Council's Terms and Conditions of EOI, the Principal may take the failure into account when considering this or any subsequent Expression of Interest from the Respondent, and may pass over the Submission.

1.4 Definitions

Unless the context requires otherwise, the following terms used in this Request have the meanings ascribed to them as set out below:

Closing Time - means the closing time for the receipt of Submissions as set out on the Cover Page.

Conditions - means the Conditions of the Expression of Interest set out in this document.

Conforming Submission - means a Submission that complies with all sections of this Request.

Principal - means Council and/or Agency.

Cover Page - means the cover page of this Request.

Goods - means the item(s) that the Contractor is required to provide to the Principal under the contract as detailed in the Expression of Interest Document.

Late Submission - means a Expression of Interest received by the Council after the Closing Time.

Nominated Contact - means Council's "Nominated Contact Person" as set out on the Cover Page.

Non-Conforming Submission - means a Submission other than a Conforming Submission.

Period of Contract - means the contract duration as defined in the Conditions of Contract.

Principal's Representative - means the officer nominated by and representing the Principal for the purposes of the Contract.

Request - means the Principals documentation requesting the provision of goods/services/works from suitably qualified contractors.

Request for Expression of Interest / EOI - means the Principal's documentation requesting the provisions of goods/services/works from suitably qualified contractors.

Services - means the services which the contractor is required to provide to the Principal under the Contract as detailed in the Expression of Interest Documents.

Special Conditions of Contract – means contract conditions as supplied in the Request. This may refer to a referenced recongnised standard contract such as an Australian Standards contract, gc21, etc or an attached contract document.

Specification/ Brief – means the document within the Request detailing the goods/services/works being requesting in the EOI.

Submission / Response – means the quotation provided by the Respondent in response to the EOI.

Successful Respondent - means the Respondent accepted by Council to provide the Goods/Services.

Expression of Interest Evaluation Committee – means the committee responsible for evaluating responses to this EOI.

Respondent - means the entity replying to the EOI.

Terms and Conditions of Agreement - means the contract formed by the acceptance of an EOI, and governed by the Conditions of Contract.

2. Terms and Conditions

2.1 How to Prepare Your Expression of Interest Response

- Carefully read all parts of this document.
- Ensure you understand the requirements.
- Complete and return the Expression of Interest Forms/Returnable Schedules including all attachments. The submission must be written in English.
- Make sure you have signed the Expression of Interest Forms/Returnable Schedules and responded to all of the Selection Criteria.
- Lodge your Expression of Interest before the Deadline.

2.2 Amendments to the Request/Council Rights

The Respondent must not alter or add to the Request documents unless required by these Conditions of the Expression of Interest (EOI).

Without limiting its rights at law or otherwise, Council reserves the right in its absolute discretion at any time to do one or any combination of the following prior to the closing date by notice to each Respondent:

- Defer the closing date or any other date under this EOI; or
- Vary, amend, change or modify any aspect of this EOI, in which case Council will issue an addendum to all Respondents correcting any ambiguity or mistake concerning or arising out of this EOI and any such addendum will become part of this EOI;
- Prior to or after the closing date, by notice to each Respondent, issue an addendum to all Respondents correcting any ambiguity or mistake concerning or arising out of this EOI and any such addendum will become part of this EOI;
- Evaluate Submissions as Council sees appropriate in the context of its requirements for the procurement;
- Cease to proceed with the process outlined in this Request or subsequent process;
- Accept all or part of a Submission;
- Reject any Submission;
- Accept an alternate Submission;
- Obtain further information from Respondents with respect to its Response for the purposes of clarification or explanation of its Response. This includes holding interviews with some or all Respondents, including any personnel nominated by the Respondent in the Response.

All Submissions lodged will become the property of Council and on no account will they be returned to Respondents. Council is not bound to accept the lowest or any Submission.

2.3 Clarification of the Request

If the Respondent has any doubt as to the meaning of any part of this Request or the scope of the work/specification required they should seek to clarify points of doubt or difficulty with the Contact Officer before submitting a Submission.

The Principal reserves the right not to answer requests for clarifying information made within five business days prior to the Deadline. Alternatively, when submitting its Submission the

Respondent may include a statement of the interpretation upon which it relies and upon which the Expression of Interest has been prepared.

2.4 Respondents to inform themselves

The Information in this Request has been provided in good faith. It is intended only as an explanation of the Principal's requirements and is not intended to form the basis of a Respondent's decision on whether to enter into any contractual relationship with the Principal.

The Information provided does not purport to be all-inclusive or to contain all information that a prospective contractor may require. Respondents and their advisers must take their own steps to verify information which they use and must make an independent assessment of the opportunity described in this Request after making such investigation and taking such professional advice as they deem necessary.

Respondents will be deemed to have:

- examined the Request and any other information available in writing to Respondents for the purpose of submitting;
- examined all further information relevant to the risks, contingencies, and other circumstances having an effect on its Submission which is obtainable by the making of reasonable enquires;
- satisfied themselves as to the correctness and sufficiency of its Submission including submitted prices which will be deemed to cover the cost of complying with this Request and of all matters and things necessary for the due and proper performance and completion of the work described therein; and
- satisfied themselves they have a full set of the Request documents and all relevant attachments which includes all pages which are numbered consecutively and that all supplements referred to are also included.

None of the Principal, the Principal's members, directors, officers, employees, agents or advisers make any representation or warranty as to the adequacy, accuracy, reasonableness or completeness of the Information.

Neither the Principal nor their professional advisers shall be liable for any loss or damage arising as a result of reliance on the Information nor for any expenses incurred by Respondents at any time.

Any advisers or agents appointed by the Principal, whether legal, financial, technical or other, will not be responsible to anyone other than the Principal for providing advice in connection with the Request.

The Respondent represents and warrants that:

- the Respondent submits its Submission in good faith;
- no information provided by or on behalf of the Respondent to Council is or will be false or misleading;
- it has no conflict of interest at the date of submitting its Submission. The Respondent will immediately inform Council of it becoming aware of any actual or potential conflict of interest;
- it has not colluded in any way with any other Respondent including in an attempt to “price fix” or decrease the competition of the EOI in any way. Evidence of collusive practices may lead to the rejection of some or all Submissions and the Respondents involved in such practices may be barred from engaging with Council in the future and may be reported to the Australian Competition and Consumer Commission; and

- it has not directly approached or attempted to influence any elected or staff member of Council.

2.5 Submissions

Submit all information called for in the Expression of Interest documents.

Where applicable, refer to each Addendum and state that the Expression of Interest allows for the instructions given in the Addendum.

General information about the Respondent, such as brochures, advertising, product or company information or marketing brochures or presentations other than those expressly requested, are to be sent with the Expression of Interest submission, is not required with the Expression of Interest unless expressly requested in the Request. If required the Expression of Interest Evaluation Committee will request these materials separately.

2.6 Lodgement of Submissions and Delivery Method

The Expression of Interest must be lodged by the closing date and time and by the method as outlined on the front cover page of this EOI.

2.7 Conditions of Electronic Submission

Submissions lodged electronically will be treated in accordance with the *NSW Electronic Transactions Act 2000*, and given no lesser level of confidentiality, probity and attention than Submissions lodged by other means.

Council may not consider Expression of Interest responses that cannot be evaluated due to being incomplete or corrupt.

Files must be checked by a reputable virus scanning application prior to submission and be found to free from virus malicious code or other properties (including executable code) that may compromise Councils IT environment.

Files submitted must be in PDF format, a format able to be read, formatted, displayed and printed by Microsoft Word or any other format required by the EOI documents.

2.8 Acceptance of Submissions

Unless otherwise stated in this Request, Submissions may be for all or part of the requirements and may be accepted by the Principal either wholly or in part. The Principal is not bound to accept the lowest Submissions and may reject any or all Submissions and may waive any irregularities therein.

Acceptance of submission with a whole of life cost in excess of $500,000 can only be approved by the passing of a Council resolution. Once a Council resolution has been issued accepting a submission, written notification will be provide to the successful Respondent notifying, and detailing to the extent, that the submission has been accepted.

A Submission shall be accepted (and for all purposes shall be deemed to be accepted) when a Council resolution has been passed detailing the conditions (if any) of the acceptance of a submission and a subsequent Notice of Acceptance will be provided to the Respondent; or is delivered by prepaid post; or sent by facsimile to the facsimile number given by the Respondent; or sent by email or some other electronic means to the address furnished in the Offer Form. In the latter case, the time of posting shall be deemed to be the time of acceptance.

No legal or other obligation will arise between a Respondent and the Principal in relation to the conduct or outcome of the Expression of Interest process unless and until that Council

Resolution has been issued and subsequently the Respondent has received written notification from the Principal of the acceptance of the Submission.

In the event that the whole of life cost of the contract is not estimated to exceed $500,000, the relevant Procurement Delegate will be the body responsible for the acceptance of a submission.

Unless otherwise stated in this Request, Sumbissions may be for all or part of the requirements and may be accepted by the Principal either wholly or in part. The Principal is not bound to accept the lowest Submission and may reject any or all Submissions submitted and may waive any irregularities therein.

The Submission and the acceptance thereof shall constitute a binding contract between the Principal and the Respondent on and subject to the terms of the:

- Formal Instrument of Agreement;
- General Conditions of Contract and any Special Conditions of Contract;
- The Specification; and
- Respondent's Offer Form via the Response Schedules.

2.9 Rejection of Submissions

A Submissions will be rejected without consideration of its merits in the event that:

a) it is not submitted before the closing date and time; or

b) it is not submitted at the place specified in the Request.

2.10 Late Submissions

Late Submission will not be considered.

2.11 Evaluation Methodology

Expression of Interest Responses will be evaluated against the evaluation criteria set out in the Request.

2.12 General Evaluation Considerations

Information provided by the Respondent in its response to the Request will be the basis of the evaluation of these criteria. Respondents are advised to respond clearly to all of the requirements listed in the Request.

Those evaluation criteria designated as Mandatory Participation Criteria are evaluation criteria that **MUST** be met by the Respondent. A Submission that fails to fully comply with those evaluation criteria may be exclude the Submission without further consideration.

Technical and Commercial evaluation criteria are evaluation criteria which will be taken into account by the Expression of Interest Evaluation Committee when conducting an overall value for money assessment of the Submission. Failure to fully comply with those evaluation criteria may reduce the Respondent’s overall score but will not result in the exclusion of the Submission from further consideration.

Council may, in its sole discretion, seek clarification from any Respondent regarding information contained in the Submission and may do so without notification to any other Respondent.

A Respondent may be invited to a one-on-one evaluation conference in order to review and clarify the Submission and to enable Council to interview key personnel identified in the Submission.

In general Submissions will be evaluated for:

- The capability of the Respondent to meet the functional and technical requirements as outlined in this EOI;
- The overall value for money of the solution;
- The Respondent's previous experience performing similar services in Australia and its demonstrated capability to provide services of comparable complexity and size;
- The additional benefits and value add the Respondent has provided in its response;
- Overall suitability of the Respondent and Sub-contractors, its probity, financial standing, reputation and quality assurance system in place;
- Proposed conditions of Contract;
- Respondent's ability and capacity to meet the requirements;
- Quality of Referee reports; and
- Other issues relating to the fitness for purpose of the products offered including sub-contractors, Repsonednet's Quality Standard and Quality Assurance System.

Specifically, the Response will be assessed against the Mandatory Participation Criteria, the Technical and Commercial Evaluation Criteria detailed in the Request.

The quality and the format of the Response will be taken into account in evaluating the Response.

Council is not bound or required to accept the lowest price, or any Response, whether or not it is a Conforming Response.

2.13 Mandatory Participation Criteria

If Mandatory Participation Criteria are to be specified they will be detailed in the Request.

Each Submission will be assessed on a Yes/No basis (in effect, a Pass / Fail scenario) as to whether the compliance criterion is satisfactorily met. An assessment of "No" against any criterion may eliminate the Submission from consideration.

2.14 Evaluation Criteria

Submissions will be assessed against both Commercial (Pricing etc.) and Technical (Non-Price) Criteria.

Submissions will be assessed using a weighted scoring process based on information provided with the Submission.

The criteria used in the evaluation of Submissions will be detailed in the Request.

2.15 Financial Capacity

Respondents must have sufficient financial capacity to perform the services required under the Agreement.

As part of its response, Respondents are to give consent to the Council to complete a financial risk assessment review by its appointed credit rating agency or representative.

In submitting a Response, the Respondent will be taken to have consented the Principal accessing this financial viability / risk assessment and information, including any personal information contained therein.

Respondents who are identified as a financial risk as a result of these reviews may, at Council's discretion, be passed over and removed from further participation in the evaluation process.

2.16 Alternative or Non-Conforming Submissions

The Principal reserves the right to accept an Alternative or Non-Conforming Submission.

If a Respondent wishes to submit an Alternative or Non-Conforming Submission it must also:

a) Submit a conforming Submission

b) Submit an unmarked copy of the Alternative or Non-Conforming Submission; and

c) Submit a copy of the non-conforming Submission in a marked up form, which identifies all departures from the conforming Submission. The detail provided must fully describe and price any conditions, qualifications, or departures from the specification for the Alternative or Non-Conforming Submission.

Council may, at its absolute discretion, consider an Alternative or Non-Conforming Submission; however it is not obliged to do so.

2.17 Departures, Clarifications and Assumptions

The Respondent is to declare and detail any Departures, Clarifications or Assumptions that have been taken into account and included in its response to the EOI.

These Departures, Clarifications or Assumptions can address any conditions or positions in the Conditions of Contract or requirements as detailed in the Specification supplied that are material to the response.

Submissions will be accepted as accepting and complying with all terms and conditions of the Request, the Conditions of Contract and the Specification unless expressly noted in the Submission.

2.18 Submission Validity Period

All Submissions will remain valid and open for acceptance for a minimum period of ninety (90) days from the closing date and time or forty-five (45) days from the Principal's decision for determining the EOI, whichever is the later unless extended by mutual agreement between the Principal and the Respondent(s) in writing. Respondents may withdraw its Submission at any time after the expiration of the Submission Validity Period.

2.19 Variation of Submission

a) Before the Principal accepts any of the received Submission to Contract, a person who has submitted a Submission may, subject to subparagraphs below, vary the Submission:

   i. by providing the Principal with further information by way of explanation or clarification, or

   ii. by correcting a mistake or anomaly.

b) Such a variation may be made either:

   i. at the request of the Principal, or

   ii. with the consent of the Principal at the request of the Respondent, but only if, in the circumstances, it appears reasonable to the Principal to allow the Respondent to provide information or correction.

c) If a Submission is varied in accordance with this paragraph, the Principal will notify in writing all other Respondents that have the same or similar characteristics as the varied Submission, and provide them with the opportunity of varying its Submission in a similar way.

d) The Principal will not consider a variation of a Submission if the variation would substantially alter the original Submission.

2.20 Identity of the Respondent

The identity of the Respondent and the Contractor is fundamental to the Principal. The Respondent will be the individual, individuals, corporation or corporations named as the Respondent in whose execution appears on the Offer Form in this Request.

2.21 Submitted Price

The price outlined in the Submission must quote all prices inclusive of GST.

The price submitted will be net and what the Principal will be required to pay pursuant to the Contract and must include all costs associated with the Contract.

The price submitted should be firm for the duration of the contract.

The Respondent must provide its Australian Business Number (ABN), or, if it does not have an ABN, the reason for not having one.

Payments between Council and the Contractor will be exclusively in Australian dollars (AUD).

2.22 Conditions of Contract

Shellharbour City Council Supply of Goods and Services – Terms and Conditions (available at http://www.shellharbour.nsw.gov.au/Documents/Live/My-Business/procurement-terms-conditions) apply to this EOI. Where required, additions and/or departures to these terms and conditions will be provided under Special Conditions of Contract. Special Conditions of Contract will be provided for in the Request as a reference to a recognised standard contract or as and attached contract document.

Respondents will be deemed to have been made, on the basis of, and to incorporate the Shellharbour City Council Supply of Goods and Services – Terms and Conditions and any Special Conditions of Contract.

2.23 Precedence of Documents

In the event of any conflict or inconsistency between any clauses of documents comprising the EOI, the following order of priority will apply:

Special Conditions of Contract;

Specification;

Conditions of the Expression of Interest;

Shellharbour City Council Supply of Goods and Services – Terms and Conditions

2.24 Ownership of Submissions

All documents, materials, articles and information submitted by the Respondent as part of or in support of a Submission will become property of the Principal and will not be returned to the Respondent at the conclusion of the Expression of Interest process. The Respondent will be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided by the Contract.

The Respondent does not acquire intellectual property rights in the Request documents. Respondents shall not reproduce any of the Request documents in any material form (including photocopying or storage in any medium by electronic means) without the written permission of the Principal other than for use strictly for the purpose of preparing Submissions.

2.25 Registration or licensing of Contractors

Where an Act requires that a contractor (as defined by the Act) be registered or licensed to carry out the work described in the Request, the Respondent shall state in the appropriate

Response Schedule, its registration or licence number. The Expression of Interest may not be considered if the Respondent fails to provide such registration or license number.

2.26 WHS Obligations

Lodgement of a Expression of Interest will itself be an acknowledgement and representation of requirements in relation to WHS, which the Respondent will comply with all relevant legislation and agrees to provide periodic evidence of compliance, and give access to all relevant information to demonstrate compliance for the duration of any contract that may be awarded.

3. Participation in the Expression of Interest Process

3.1 Jurisdiction

The Project, the EOI and the final Contract Documents will be governed by the law of NSW. By lodging a Submission the Respondent irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of NSW.

3.2 Costs of Submission

Respondents remain responsible for all costs incurred by them in connection with its Submssion whether before or after the submission date and whether incurred directly by them or their advisers regardless of whether such costs arise as a direct or indirect consequence of amendments made to the Request by the Principal. For the avoidance of doubt, the Principal shall have no liability whatsoever to Respondents for the costs of any negotiations conducted in the event that the Principal decides not to accept any Submissions.

3.3 Canvassing of Officials

Any Respondent who solicits or attempts to solicit support for its Submission or otherwise seeks to influence the outcome of the Expression of Interest process by:

a) offers of any inducement, fee, or reward, to any member or officer of the Principal, or any person acting as an adviser for the Principal; or

b) canvasses any persons referred to in this document; or

c) contacting any member or officer of the Principal about the Request or any process relating thereto, except as authorised by this Request including (but without limitation) for the purposes of discussing the possible employment transfer of the Respondent member or officer,

may be disqualified from involvement in the EOI process (without prejudice to any other civil remedies available to the Principal and without prejudice to any criminal liability which such conduct by a Respondent may attract), at the Principal's discretion.

3.4 Confidentiality

The Principal makes information available on condition that it is treated as confidential by the Respondent and is not disclosed, copied, reproduced, distributed or passed to any other person at any time except for the purpose of enabling a Submission to be made, for example by disclosure by a Respondent to its insurers or professional advisers, provided they have each given an undertaking at the time of receipt of the relevant information (and for the benefit of the Principal) to keep such information confidential. Other than specified above, or as required by law, and save insofar as the information is in the public domain, Respondents shall not make any of the Information available to any other parties in any circumstances without the prior written consent of the Principal nor use it for any purpose other than that for which it is intended.

3.5 Statement of Business Ethics

Council is committed to the highest standards of honesty, fairness and integrity in all its business dealings. Council's Statement of Business Ethics sets out the standards of behaviour that Council expects from its private sector partners. These standards of behaviour relate to fair, ethical and honest dealings with Council, and ensuring that the best level of service is provided to the community. This document is available on Council's internet site (*http://www.shellharbour.nsw.gov.au*). Breaches of this Statement may constitute grounds for termination of this contract.

3.6 GIPA Requirements (where relevant)

Where the arrangement involves the Respondent providing services on behalf of Council, s 121 of the GIPA Act requires that the following be included in any contract, and this will be part of the contract with Council:

1. The Contractor must, within seven (7) days of receiving a written request by the Agency, provide the Agency with immediate access to the following information contained in records held by the Contractor:
    a. information that relates directly to the performance of the services provided to the Agency by the Contractor pursuant to the Contract;
    b. information collected by the Contractor from members of the public to whom it provides, or offers to provide, the services pursuant to the Contract; and
    c. information received by the Contractor from the Agency to enable it to provide the services pursuant to the Contract.
2. For the purposes of sub-clause (1), information does not include:
    a. information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;
    b. information that the Contractor is prohibited from disclosing to the Agency by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
    c. information that, if disclosed to the Agency, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the Agency, whether at present or in the future.
3. The Contractor will provide copies of any of the information in sub-clause (1), as requested by the Agency, at the Contractor's own expense.

Any failure by the Contractor to comply with any request pursuant to sub clause (1) or (3) will be considered a breach of an essential term and will allow the Agency to terminate the Contract by providing notice in writing of its intention to do so with the termination to take effect seven (7) days after receipt of the notice. Once the Contractor receives the notice, if it fails to remedy the breach within the seven (7) day period to the satisfaction of the Agency, then the termination will take effect seven (7) days after receipt of the notice.

3.7 Non Collusion

Any Respondent who:

a) fixes or adjusts the amount of its Suubmission by or in accordance with any agreement or arrangement with any other Respondents; or

b) enters into any agreement or arrangement with any other Respondent that it shall refrain from Responding or as to the amount of any Submission to be submitted; or

c) causes or induces any person to enter such agreement or to inform the Respondent of the amount or approximate amount of any rival Submssion for the Contract; or

d) canvasses any of the persons previously discussed in connection with the Expression of Interest or the outcome of the Expression of Interest process; or

e) offers, agrees, or does; pay any sum of money, inducement or valuable consideration. This being directly or indirectly to any person for doing, having done, causing, or caused to be done in relation to any other Expression of Interest or proposed Expression of Interest any act or omission; or

f) communicates to any person other than the Principal the amount or approximate amount of its proposed Submission (except where such disclosure made in

confidence in order to obtain quotations necessary for the preparation of the Submssion, for insurance or contract guarantee bonds and/or performance bonds or professional advice required for the preparation of a Submission),

may, at the discretion of the Principal, be disqualified from any further involvement in this Expression of Interest process (without prejudice to any other civil remedies available to the Principal and without prejudice to any criminal liability which such conduct by a Respondent may attract).

3.8 Publicity

Respondents must obtain the written approval from the Contact Officer before any disclosures relating to the Expression of Interest or the contract are made to the press or in any other public domain. Respondents must not undertake any publicity activities with any part of the media in relation to the Expression of Interest or contract without the agreement of the Principal, including agreement on the format and content of any publicity.

END OF CONDITIONS OF THE EXPRESSION OF INTEREST (EOI)