

Conditions of Tender

Part 1

Burdekin Shire Council
(‘Principal’)

Green Waste Processing for Burdekin Shire

Council Agreement No.: TBSC/18/005

Contents Page

1. Definitions.....	3
2. Structure Of Request for Tender	4
3. Obtaining Information	4
4. Collusive or Anti-competitive Conduct.....	5
5. Responsibilities of Tenderer.....	5
6. Formal Requirements	6
7. Conforming and Non-Conforming Tenders	7
8. Lodgement of Tender.....	7
9. Opening of Tenders Here	8
10. Tender Evaluation Process.....	8
11. Clarification and Variations	9
12. Commissions and Incentives	10
13. Confidentiality	10
14. Acceptance of Tender.....	11
15. Right to Information and Disclosure	11
16. Ownership of Tenders	12
17. Information Privacy	12
18. Policies Particular to the Principal	12
19. In-House Tenders.....	12

1. Definitions

1.1 In these Conditions of Tender, except where the context otherwise requires:

‘Closing Time’ means **10.00am on the 15th August 2018** Australian Eastern Standard Time.

‘Conditions of Tender’ means these Conditions of Tender.

‘Confidential Information’ means any technical, commercial or other information, ideas, concepts, know-how, data, drawings, specifications or designs of any kind:

- a) owned by the Principal and supplied or made available by the Principal to the Tenderer; or
- b) created by the Tenderer, from the material supplied or made available to the Tenderer by the Principal for the purposes of submitting the Tender.

‘Contact Person’ means **Mr. Lachlan Kerr**.

‘Contract’ has the meaning given in the General Conditions of Contract.

‘Contract Price’ has the meaning given in the General Conditions of Contract.

‘Contractor’ has the meaning given in the General Conditions of Contract.

‘General Conditions of Contract’ means the General Conditions of Contract (if any) comprising Part 4 of the Request for Tender.

‘GST’ has the meaning given in the General Conditions of Contract.

‘Letter of Acceptance’ has the meaning given in the General Conditions of Contract.

‘Local Government’ has the meaning given in the General Conditions of Contract.

‘Personal Information’ has the meaning given in the Information Privacy Act 2009.

‘Principal’ means Burdekin Shire Council.

‘Relevant Person’ means the Tenderer and each person engaged in the preparation of a Tender on behalf of the Tenderer.

‘Request for Tender’ or ‘RFT’ see Clause 2.1.

‘RTI Act’ means the Right to Information Act 2009.

‘Specification’ means the Specification comprising Part 2 of the Request for Tender, including any amendment or addition to the Specification.

‘Tender’ means a tender lodged in response to the Request for Tender.

‘Tenderer’ means any person lodging a Tender.

‘Tender Response’ means the Tender Response comprising Part 3 of the Request for Tender, including any templates or attachments to be completed and included in a Tender.

2. Structure of Request for Tender

- 2.1 The documents comprising the Request for Tender are, collectively :
- a) Part 1 – Conditions of Tender (read and keep this part); and
 - b) Part 2 – Specification (read and keep this part); and
 - c) Part 3 – Tender Response which, when completed by the Tenderer, comprises the Tender of the Tenderer (complete and return this part); and
 - d) Part 4 – General Conditions of Contract (read and keep this part); and
- 2.2 All parts of the Request for Tender must be read and construed together so that all parts are as far as possible consistent. Where the documents are inconsistent, the documents should be read and construed in the order of priority from document (a) to (d) as follows:
- a) Conditions of Tender;
 - b) Specification;
 - c) General Conditions of Contract;
 - d) Tender Response.
- 2.3 The Request for Tender is not an offer. The Request for Tender is an invitation for persons to submit an offer for the supply of the Services particularised in the Specification.

3. Obtaining Information

- 3.1 The Principal will provide the Tenderer with the Request for Tender. No fee is payable for the Supply of the Request for Tender.
- 3.2 Any additional information required by a Tenderer may be obtained from the Contact Person
- 3.3 Tenderers must not direct request for information to, or seek to discuss the Request for Tender process with, any Councillor or officer of the Principal other than the Contact Person
- 3.4 The Principal will not be bound by any advice or information furnished by a Councillor or officer of the Principal with respect to the Request for Tender
- 3.5 Information provided to the Tenderer by or on behalf of the Principal:
- a) will be provided for the convenience of the Tenderer only, and, unless expressly incorporated into the Contract, will not form part of the Contract; and
 - b) is not warranted or represented by the Principal as accurate, correct or adequate.
- 3.6 If the Principal makes information available to a Tenderer, the Principal reserves the right to distribute the information to each Tenderer who has obtained a copy of the Request for Tender from the Principal.
- 3.7 If requested by the Principal, the Tenderer must:
- a) provide further information relating to the Tender; and
 - b) give a presentation at a time and place nominated by the Principal:
 - i) to demonstrate the Tenderer's financial substance, technical capabilities and resources; and

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

- ii) to demonstrate its ability to comply with the terms and conditions of the Contract; and
- iii) in relation to anything else relative to the Tender; and
- c) allow the Principal and its agents to inspect any facility or equipment the Tenderer proposes to use in complying with the terms and conditions of the Contract; and
- d) authorise the Principal and its agents (in writing, if required) to contact any referee nominated by the Tenderer; and
- e) authorise the Principal (in writing, if required) to obtain information about the Tenderer, particularly information relevant to the Tenderer's ability to discharge the responsibilities of the Contractor under the Contract, from any third party the Principal considers may be able to provide that information.

3.8 The Principal may provide information to Tenderers in electronic format, in addition to the hard copy format.

3.9 Where there is an inconsistency between the information in the electronic format and the hard copy information, the latter prevails.

4. Collusive or Anti-Competitive Conduct

4.1 The purchasing authority reserves the right, at its discretion, to report suspected collusive or anti – competitive conduct by tenderers to the appropriate regulatory authority and to provide that authority with any tenderer information.

5. Responsibilities of Tenderer

5.1 Before submitting its Tender, each Tenderer must:

- a) carefully read and consider the Request for Tender and any other information made available by the Principal with respect to the Request for Tender and the process of tendering for the Contract; and
- b) read and consider all information relevant to the risks, contingencies and other circumstances relevant to the Request for Tender; and
- c) inform itself of the nature of the obligations it must discharge under the Contract; and
- d) inform itself of the labour, plant and equipment and other items necessary, suitable or desirable to enable the Tenderer to discharge its obligations under the Contract; and
- e) not rely upon information provided by or on behalf of the Principal; and
- f) independently verify any information provided by or on behalf of the Principal, and satisfy itself that the information is adequate and accurate; and
- g) satisfy itself that the information in its Tender is accurate and complete; and
- h) satisfy itself that its Tender complies in all respects with the requirements of the Conditions of Tender.

5.2 In evaluating Tenders and determining with whom it will enter the Contract, the Principal will rely upon Tenderers having complied with the requirements of Clause 5.1

5.3 Failure to comply with any requirement in Clause 5.1 will not relieve the relevant Tenderer of responsibility to complete the Contract in accordance with its terms, and in particular, the price or rate tendered by the Tenderer.

5.4 The Principal will not be responsible for the payment of any expenses or losses incurred by the Tenderer in:

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

- a) preparing and lodging its Tender; or
- b) participating in any post Tender activities

5.5 A Tender will not be considered if the Tenderer or anybody on its behalf offers or gives anything to:

- a) any Councillor or the Principal; or
- b) any officer or agent of the Principal,

as an inducement or reward that could influence the actions of the person in relation to the Tender.

6. Formal Requirements

6.1 The Tender must be submitted in writing in the form of the Tender Response.

6.2 The Tender Response must be fully completed and include all supporting documents and materials required by both the Conditions of Tender and the Tender Response.

6.3 The tender response must contain the Tenderer's:

- a) full name; and
- b) Australian Business Number; and
- c) address and facsimile number for the service of notices

6.4 If the Tenderer operates as a firm the Tender Response must contain:

- a) the full names and addresses of each member of the firm; and
- b) the business name under which the firm trades; and
- c) the firm's address and facsimile number for the service of notices; and
- d) the firm's Australian Business Number

6.5 If the Tenderer is a corporation, the Tender Response must contain details of the corporation's:

- a) name; and
- b) business name (if applicable); and
- c) Australian Business Number; and
- d) registered office; and
- e) address and facsimile number for the service of notices; and
- f) the name, telephone number and address (if different from the address for service of notices) of a natural person who is authorised by the corporation to represent it in relation to the Tender.

6.6 If the Tenderer is a consortium or a joint venture, the Tender Response must contain details of:

- a) the name of each member; and
- b) the structure of the consortium or joint venture, including the proposed managerial structure; and
- c) the role to be played by each member in complying with the terms and conditions of the Contract; and

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

- d) in the case of a consortium, the member who is to be the principal contractor on behalf of the consortium.
- 6.7 The Tender Response must be duly executed in a manner that binds the Tenderer.
- 6.8 The contract Price in the Tender Response must be:
 - a) in Australian dollars; and
 - b) unless otherwise specified in the Tender Response, GST inclusive
- 6.9 A Tenderer must provide **3** executed copies of its Tender (one to be marked “ORIGINAL” and each other (if any) to be marked ‘COPY’). Any brochure or pamphlet which forms part of a Tender must be attached to both the original and each copy of the Tender.
- 6.10 The Tenderer must:
 - a) securely attach (for example, by bulldog clip), but not bind or staple, the original of its Tender; and
 - b) bind each copy of its Tender; and
 - c) number consecutively each page of its Tender; and
 - d) include an index in the Tender
- 6.11 The identity of the Tenderer is fundamental to the Principal. For the purpose of a Tenderer’s Tender, the Tenderer is the person, persons, corporation or corporations:
 - a) who is named as the Tenderer in the Tender Response: and
 - b) who has duly executed the Tender Response in a manner that binds the Tenderer
- 6.12 A Tenderer must also provide an electronic copy of the Tender in P.D.F format (USB).

7. Conforming and Non-Conforming Tenders

- 7.1 A Tenderer may lodge non-conforming Tenders only if it has lodged a conforming Tender.
- 7.2 Each non-conforming Tender must be accompanied by a clear summary of all points of difference between the non-conforming Tender and the conforming Tender.
- 7.3 Each non-conforming Tender must be submitted on a separate Tender Response.
- 7.4 A Tender may be considered as non-conforming if the Tenderer has failed to supply any of the information required by the Conditions of Tender, does not comply with any of the requirements of the Conditions of Tender or has been lodged subject to any condition or qualification.
- 7.5 If more than one conforming Tender is lodged, each Tender must be accompanied by a clear summary of all points of difference between each conforming Tender.
- 7.6 The Principal will not be obliged to consider any Tender that does not comply with the requirement of the Conditions of Tender.

8. Lodgement of Tender

- 8.1 Each Tender must be submitted in a sealed envelope, addressed to:

“Chief Executive Officer
Burdekin Shire Council,
145 Young St.

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

Ayr Q. 4807.
Attention Mr. Lachlan Kerr.
Green Waste Processing for Burdekin Shire Council
Agreement No.: TBSC/18/005

- 8.2 Tenders must be lodged in the container marked “Tender Box” at:
Burdekin Shire Council.
145 Young St.
Ayr. Q. 4807.
- 8.3 Where a Tenderer lodges a non-conforming Tender:
- the conforming and non-conforming Tenders must be submitted in separate envelopes; and
 - the non-conforming Tender must be clearly marked, “ALTERNATIVE TENDER” (in addition to being marked in conformity with Clause 8.1).
- 8.4 Tenders must be in the Tender Box by the Closing Time.
- 8.5 The Principal may extend the Closing Time at its discretion.
- 8.6 The Principal reserves the right to consider a Tender which is not in the Tender Box by the Closing Time if, in the opinion of the Principal, there is satisfactory evidence that:
- the Tender was dispatched by prepaid post or courier service in sufficient time to effect delivery to the Tender Box by the Closing Time under normal circumstances; and
 - at the Closing Time the Tender was still in the course of delivery.
- 8.7 A Tender will not be accepted if it is submitted only:
- electronically; or
 - by facsimile; or
 - electronically and by facsimile.
- 8.8 A Tenderer must not alter or add to the Tender Response unless required by the Conditions of Tender.
- 8.9 A Tender is irrevocable for 90 days after the Closing Time.
- 8.10 The period in Clause 8.9 may be extended by mutual agreement between the Tenderer and the Principal.
- 8.11 Each Tender constitutes an offer by the Tenderer to the Principal to supply the Services required under, and otherwise to satisfy the requirements of, the Specification on the terms and conditions of the Contract.

9. Opening of Tenders Here

- 9.1 Tenders will be opened after the Closing Time.
- 9.2 Tenders **will not** be opened publicly.

10. Tender Evaluation Process

- 10.1 Tenders will be evaluated by reference to the sound contracting principles in section 104 of the Local Government Act 2009, namely:

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

- a) value for money; and
 - b) open and effective competition; and
 - c) the development of competitive local business and industry; and
 - d) environmental protection; and
 - e) ethical behaviour and fair dealing.
- 10.2 Each Tender will be evaluated using the information provided in the Tender Response.
- 10.3 If a Tender Response for a Tender is not fully completed or does not include all supporting documents and materials required by the Conditions of Tender or the Tender Response, the Tender may be rejected.
- 10.4 In evaluating Tenders, the Principal may:
- a) require presentations from Tenderers; and
 - b) conduct interviews with Tenderer's staff and subcontractors; and
 - c) contact Tenderers' referees; and
 - d) investigate a Tenderer's structure and management, and that of any relevant subsidiary or related corporation; and
 - e) make its own assessment of the Tenderer's ability to comply with the terms and conditions of the Contract at the tendered price; and
 - f) verify that the Tenderer holds all necessary permits, licences, approvals and certifications necessary to enable it lawfully to comply with the terms and conditions of the Contract.
- 10.5 Tenderers must give the members of the evaluation panel of the Principal any cooperation and assistance reasonably requested of them to facilitate consideration of their Tenders.
- 10.6 Compliance criteria for the Request for Tender are specified in Item 3.1 of the Tender Response. Each Tender will be assessed on a Yes/No basis as to whether each of the compliance criterion is satisfied by the Tenderer or not. If a Tender Response is assessed as "No" in respect of a criterion, the Tender may be rejected.
- 10.7 Qualitative criteria for the Request for Tender are specified in Item 3.2 of the Tender Response. The qualitative criteria may be weighted to indicate the relative degree of importance that the Principal places on the technical aspects of the supply of the Services. Each Tenderer must address each of the qualitative criteria specified in Item 3.2 of the Tender Response. If a Tenderer fails to address any of the qualitative criteria in Item 3.2 of the Tender Response, its Tender may be rejected.

11. Clarification and Variations

- 11.1 The Principal may issue to Tenderers before the Closing Time:
- a) additional information; and
 - b) information clarifying or correcting information previously provided,
- to assist them in preparing their Tenders.
- 11.2 If the Principal issues information to Tenderers under Clause 11.1, each Tenderer must take the information into account in the preparation of its Tender.
- 11.3 After the Closing Time, the Principal may (without limiting its options):

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

- a) request clarification or further information from any Tenderer; and
- b) invite all Tenderers to change their Tenders in response to an alteration to the Specification or any of the terms and conditions of the Contract; and
- c) negotiate with one or more Tenderers upon any aspect of their Tenders.

12. Commissions and Incentives

- 12.1 A Tender will not be considered if anybody offers or gives anything to a Councillor of the Principal, or any officer or agent of the Principal, as an inducement for the purpose of seeking to influence the manner in which the Tender is evaluated or the Contract awarded.

13. Confidentiality

- 13.1 The Tenderer:

- a) acknowledges that the Confidential Information is sensitive and valuable, and will remain at all times the property of the Principal; and
- b) must not use the Confidential Information for any purpose other than preparing its Tender; and
- c) must not copy any material comprising or containing Confidential Information, other than where (and then only to the extent that) copying is necessary to enable it to prepare its Tender; and
- d) must allow access to the Confidential Information by Relevant Persons only to the extent necessary to enable the Tender to be prepared; and
- e) must obtain the Principal's written consent before disclosing Confidential Information to a person other than a Relevant Person.

- 13.2 The consent of the Principal to disclosure of the Confidential Information by the Tenderer may be given or withheld on such terms and conditions as the Principal considers appropriate.

- 13.3 The Tenderer's obligation under this Clause 13 continues after closure of tenders and award of the Contract.

- 13.4 The Principal reserves the right to retrieve from a Relevant Person any Confidential Information held by that person, subject to the Principal having given written notice to the Tenderer in writing that the Relevant Person is to be denied access to the Confidential Information.

- 13.5 Failure or delay by the Principal in enforcing strict compliance with this Clause 13 or pursuing a remedy under this Clause 13 will not constitute a waiver or implied variation of the entitlement or remedy.

- 13.6 This Clause will not apply to an item of Confidential Information where the Tenderer can establish that:

- a) the item has been transferred to the public domain through no fault of the Tenderer; or
- b) the item was already in the Tenderer's possession when it was supplied or made available by the Principal, and not acquired directly or indirectly from the Principal; or
- c) it has received from the Principal written notification that the Principal no longer requires the Tenderer to keep the item confidential.

14. Acceptance of Tender

- 14.1 The Principal will not be bound to accept the lowest or any Tender.
- 14.2 The Principal may accept a Tender from a Tenderer by giving written notice in the form of a Letter of Acceptance to the Tenderer who submitted the Tender to the Principal.
- 14.3 The Contract will not come into existence until the Principal has given written notice in the form of a Letter of Acceptance to the Tenderer.
- 14.4 When the Contract comes into existence the Tenderer becomes the Contractor for the purposes of the General Conditions of Contract.
- 14.5 The Principal reserves the right to accept a Tender in part or in whole

15. Right to Information and Disclosure

- 15.1 The RTI Act provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including Local Governments).
- 15.2 The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or, on balance, disclosure is contrary to the public interest.
- 15.3 Information provided by the Tenderer is potentially subject to disclosure to third parties pursuant to the RTI Act.
- 15.4 If disclosure under the RTI Act, or general disclosure of information provided by the Tenderer, would be of substantial concern to the Tenderer, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, including Personal Information, this should be indicated by the Tenderer in its Tender. The Principal cannot guarantee that any information provided by the Tenderer will be protected from disclosure under the RTI Act.
- 15.5 The Tenderer must familiarise itself with the relevant provisions of the RTI Act dealing with the requirements for disclosure of information by agencies, and the grounds on which access to information may be refused.
- 15.6 The Principal accepts no responsibility for the accuracy or adequacy of any information it provides to Tenderers concerning the content or effect of the RTI Act.
- 15.7 The Principal reserves the right to disclose, by publication by means of media of its choosing upon award of any contract details of the name and address of the Contractor, a description of the relevant goods, services or goods and services, the commencement date of the Contract and the Contract Price or value.

16. Ownership of Tenders

- 16.1 Each Tender Response (including all supporting documentation and materials submitted by a Tenderer as part of, or in support of, a Tender) becomes the property of the Principal on submission and will not be returned to the Tenderer.
- 16.2 However, the Tenderer shall retain copyright and other intellectual property rights in respect of the Tender except to the extent specified in the Contract.
- 16.3 The Principal may reproduce the Tender for the purposes of evaluation.

17. Information Privacy

- 17.1 The Principal is bound by the provisions of the Information Privacy Act 2009.
- 17.2 By submitting a Tender, the Tenderer warrants that it has obtained the consent of each individual whose Personal Information is included in the Tender for:
- a) the inclusion of their Personal Information in the Tender; and
 - b) the use of the Personal Information by the Principal for the purpose of evaluating and awarding the Tender; and
 - c) the disclosure of the Personal Information to other parties (including professional advisors) as may be involved in assisting the Principal with the evaluation of the Tender.
- 17.3 The Tenderer must indemnify the Principal against any claim, damage or loss (including legal costs and expenses) that the Principal may incur as a consequence of a breach by the Tenderer of the warranty in Clause 17.2.
- 17.4 Any Personal Information exchanged between the Tenderer and the Principal must be dealt with in accordance with the Information Privacy Act 2009.
- 17.5 The Tenderer must immediately notify the Principal upon becoming aware of any breach of this Clause 17.

18. Policies Particular to the Principal

- 18.1 Tenders will be evaluated by reference to criteria which are particular to the Principal as follows:
- a) Council's Procurement Policy.

19. In-House Tenders

- 19.1 The Principal reserves the right to submit an in-house Tender.

Specification

Part 2

Burdekin Shire Council
(‘Principal’)

Green Waste Processing for Burdekin Shire

Council Agreement No.: TBSC/18/005

Contents Page

1. Introduction.....	3
2. Background Information.....	3
3. Definitions.....	4
4. Particulars of Green Waste Processing for Burdekin Shire Council	4
5. Specific Requirements of Contract.....	8
6. Measurement and Payment.....	14
7. Performance	15
8. Timetable for Procurement	17
9. Additional Information	17
10. Australian Standards	17

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

1. Introduction

The Contractor is required to provide green waste processing services for selected waste facilities for Council.

The Council is committed to reducing the amount of green waste going to landfill and utilising the product for the benefit of the community. The Council is seeking a Contractor which will provide a service that will allow the green waste to be diverted from landfill disposal.

The Council reserves the right to accept all or part of a Tender at the price or prices tendered unless the Tender states specifically to the contrary.

2. Background Information

2.1 The North Queensland Waste Reduction and Recycling Plan Working Group (NQWRRWG), of which Burdekin Shire Council is a member and contributor, is acutely aware of contemporary expectations and obligations in relation to environmental performance of managing waste

2.2 As part of NQWRRWG Burdekin Shire Council is actively involved with resource recovery and recycling and maximising the diversion of waste.

2.3 Burdekin Shire Council strongly supports the principles of solid waste minimisation. Green waste is estimated to comprise approximately 35% of the Community Solid Waste Stream. The disposal of green waste to landfill is seen as the last option.

2.4 The Burdekin Shire Council is committed to reducing the amount of green waste going to landfill and utilising the product for the benefit of the Burdekin community.

2.5 Council is seeking a contractor which will provide a service that will allow green waste to be diverted from disposal at landfill. The council will consider all options in relation to processing methods, proposed use of green waste, final ownership of the processed materials, sustainability and value for money.

2.6 The request for tender will include the provision of green waste processing services at the following sites as described in table 1:

Table 1

Waste Facility	Address
Kirknie Landfill	1614 Kirknie Road KIRKNIE QLD 4806
Ayr Transfer Station	2A-4A Railway Street AYR QLD 4807
Home Hill Transfer Station	80 Bojack Road INKERMAN QLD 4806
Giru Transfer Station *	Cromarty Creek Boat Ramp Road GIRU QLD 4809

* Greenwaste from the Giru Transfer Station is currently transferred to the Ayr Transfer Station for processing. Council may require greenwaste processing at the Giru Transfer Station during the term of this contract.

3. Definitions

In the contract, except where the context otherwise requires:

Business day means a day that is not a Saturday or Sunday or a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done (within the Shire of the Burdekin)

Green waste processing means works associated with processing, storage, transport, removal and reprocessing of green waste.

Stipulated site means the site or sites requiring green waste processing works to be undertaken as formally requested in writing by the Council.

4. Particulars of Green Waste Processing for Burdekin Shire Council

4.1 General

- The current amended versions of all standard codes, local laws and Acts apply.
- The Contractor must examine carefully any reports, maps, diagrams or other information which are made available by the Council, to its absolute satisfaction.
- The Contractor has informed itself for its absolute satisfaction of the physical conditions upon and below the surface of the site and the climatic conditions, and to have obtained all necessary information as to risks, contingencies and other circumstances which could have an effect upon the cost of executing the work.
- The Council reserves the right to inspect any and all work undertaken by the Contractor at any time.

4.2 Site Conditions:

The Council does not represent that information made available details fully accurately the existing site or sub surface conditions. The Contractor should make its own interpretations, deductions and conclusions from the information made available and accepts full responsibility for those interpretations, deductions and conclusions.

4.3 Salvaged Materials

Material salvaged from the service, other than that specified to remain the property of the Council, will become the property of the Contractor either for re use in the work as may be specified, or if not so re used, for disposal by the Contractor clear of the site of the work.

4.4 Precautions in Carrying out the Services

- In carrying out the work, the Contractor and Sub Contractors will comply with all requirements under Acts, Regulations, Ordinances, Local Laws, Orders and Rules and other special requirements of proper Authorities concerning storage, transport and use of materials, plant, equipment, work processes and safety precautions.
- Where any current Australian Standard published by the Standards Association of Australia is appropriate to storage, transport and use of materials, plant, equipment, to work processes or to safety precautions, the provisions of that Standard are to be observed except where it conflicts with a statutory or special requirement of any proper Authority in which case the latter is to apply.
- In the absence of any statutory or special requirements or relevant Australian Standard, the Contractor, and all Sub Contractors must ensure that suitable procedures are observed and all proper care is taken.
- The Contractor must not unreasonably destroy or damage any property. All fences, processing pads, storage pads, irrigation, drains, culverts, gardens, walls, concrete surfaces and paths, grass and trees, and other property, are to be left by the Contractor in a condition equivalent to that in which it found them, unless the Contractor provides written evidence that the owner agrees otherwise.
- Payment will not be made to the Contractor for services rendered until such time the necessary repairs

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

are undertaken and the property is returned to a condition equivalent to that in which it found them prior to undertaking the works.

- It is the responsibility of the Contractor to inspect the area prior to commencement of works, document and advise the Council of any damage to property in areas prior to the commencement of service. Failure to do so will result in the cost of repair/replacement of property to be applied to the Contractor and withholding of payment.

4.5 Frequency of Services

The Contractor must process green waste in accordance with the frequencies described in table 2.

Table 2

Waste Facility	Address	Frequency **
Kirknie Landfill	1614 Kirknie Road KIRKNIE QLD 4806	Every 3 months (unless varied or cancelled by Council) Initial date to be specified at commencement of contract
Ayr Transfer Station	2A-4A Railway Street AYR QLD 4807	Every 3 months (unless varied or cancelled by Council) Initial date to be specified at commencement of contract
Home Hill Transfer Station	80 Bojack Road INKERMAN QLD 4806	Every 3 months (unless varied or cancelled by Council) Initial date to be specified at commencement of contract
Giru Transfer Station *	Cromarty Creek Boat Ramp Road GIRU QLD 4809	Every 12 months (unless varied or cancelled by Council) Initial date to be specified at commencement of contract

* Greenwaste from the Giru Transfer Station is currently transferred to the Ayr Transfer Station for processing. Council may require greenwaste processing at the Giru Transfer Station during the term of this contract.

** Council does not warrant or guarantee the quantity as the workloads may vary from time to time. The Contractor is to make their own assessment of the work required and base their tender accordingly.

The Contractor must establish a schedule detailing frequency of services in accordance with the sites listed in table 2 in the order stipulated and approved by the Council.

The Contractor must commence services within 14 business days of the Dates specified in the approved schedule.

Alternatively, the Contractor must commence services at a stipulated site within 14 business days from the date of a written request from the Council. The Council will state in the request the order of sites to be processed and whether the processed green waste is to be kept or removed from site and any other associated services such as reprocessing to a smaller grade.

Failure to commence green waste processing within 14 business days in accordance with the agreed schedule or written request at the stipulated site will entitle the Council to undertake proposed green waste processing through use of another supplier and any difference in costs associated with the provision of the service will be charged to the Contractor which will be liable for the charge for failing to provide the service

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

as stipulated by this tender. The Council may deduct the amount of any such charge from any payment due, or that becomes due, to be paid to the Contractor.

Failure to remove mulch within 7 business days of completion of processing will entitle the Council to undertake removal of mulch through use of another supplier and any difference in costs associated with the provision of the service will be charged to the Contractor which will be liable for the charge for failing to provide the service as stipulated by this tender. The Council may deduct the amount of any such charge from any payment due, or that becomes due, to be paid to the Contractor.

Failure to comply with approved schedule and service requests will result in penalties as detailed in **Section 7** of this specification.

The Contractor must respond to any service request in writing clearly stating the date they will be attending site, a description of the works and time to complete the works.

The Contractor must complete all scheduled services and service requests within 14 business days of the commencement of mulching including the removal of the mulched product as/if directed by the Council's representative within 7 business days of completion of processing.

The Contractor within 7 business days must correct or re-perform any Services which do not comply with the requirements of this Specification due to a breach by the Contractor of its obligations.

The Council will advise the Contractor of what materials are to be processed. The Contractor does not have an exclusive right to process or retain all materials and mulched product on site.

Council reserves the right to omit items from the Services at any time prior to the execution of the Contract, without penalty to Council.

The Contractor must process all materials advised by the Council. With written approval from the Council large logs (logs greater than 300 mm in diameter) can be stockpiled for an agreed period to make more economic use of shearing equipment.

The disposal of green waste may not be fully supervised at all sites and no guarantees are given or implied as to whether stockpiled green waste is completely free of contaminants.

The Council shall, so far as reasonably practicable, prevent non-green waste being deposited in the green waste drop off, collection or storage areas. If non-green waste is found, the Contractor is to remove the contamination and place it in the bins supplied and paid for by the Council.

It is the responsibility of the Contractor to ensure non-green waste has been removed prior to treatment. Any consequent damage to the Contractor's equipment due to failure to correctly identify and remove non-green waste is the Contractor's responsibility. Due care must be exercised at all times.

The Council will not be liable for any damage to any materials, plant, equipment caused through the commission of this contract

The Council is not liable for mobilisation/demobilisation costs associated with this contract.

4.6 Transport

Transport of green waste or mulch must be conducted without nuisance or spillage and to the satisfaction of the Council's representative. All loads must be covered to prevent any spillage. Any spillage created during transportation must be immediately removed at the Contractor's expense. Any spillage which may

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

cause damage to the environment or danger to the public, or cannot be immediately cleaned up, is to be reported without delay to the Council's representative. The Contractor is liable for any clean-up costs and compensation in relation to any spillage whether on the service property of other property.

The Contractor is responsible for ensuring that truck drivers are properly trained and licensed and that all equipment is roadworthy. The Contractor must ensure that trucks travel safely and drivers do not speed or infringe any other traffic rules.

The Contractor must ensure that all trucks and equipment used under this contract are maintained in a clean and roadworthy state.

The Contractor must ensure that all trucks are marked with a clearly visible contact name and telephone number which the public can call if they wish to comment on the performance of the truck driver. The Contractor must note that depending on the location of sites, limitations may be placed on transport times and routes. For example if the route is past a school, transport may not be allowed during start time and end times for the school.

4.7 Processing

The service rate must include the processing of logs up to 300 mm in diameter. Logs over 300 mm in diameter will be considered large and must be sheared first if directed by the Council.

The Contractor must provide all equipment, materials and labour necessary to complete the services. The services must include, but are not limited to:

- process greenwaste in stockpile(s) as directed by the Council's representative into mulch, or another marketable product;
- stockpile or remove mulch as directed by the Council's representative from each of the waste facilities; and
- Perform short haul services as required on request at a designated rate.

The specific components of the services to be managed, operated and maintained by the Contractor including the approximate quantity of green waste collected at each of the waste disposal facilities is set out in the Part 3 (Tender Response) of this tender.

4.8 Method of Operation

The Contractor must submit a proposal which includes the following modes of operation:

- mulch the amount of product processed under an order with the Council retaining 100% of the product for the Council's use;
- mulch the amount of product processed under an order with the Council retaining 50% and the Contractor removing 50% of the mulched product;
- mulch the amount of product processed under an order with the Council retaining 25% and the Contractor removing 75% of the mulched product;
- mulch and remove 100%;
- short haul transport within waste facilities as directed by Council; and
- other associated costs with operations.

The Contractor must at their own expense:

- transport all necessary equipment between the various sites;
- provide all consumables such as fuel, lubricants and the like at each site;
- provide and operate all ancillary plant and equipment at each site;
- provide all travel, maintenance of the Contractor's plant and equipment and all other associated expenses involved in the performance of the work; and

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

- attend meetings with the Council's representative as requested.

4.9 Final Cleaning up

The Contractor must:

- ensure that all areas are finished to a uniform grade free from depressions and rubbish;
- remove from the site from time to time as necessary or as directed, all rubbish and debris resulting from the Contractor's activities; and
- on completion, ensure that the site is cleaned; surplus materials, tools, debris and the like are removed, so that the site is left fit for immediate use.

4.10 Facilities Provided by the Council and Contractor

For the purposes of defining operational control of each site, the Council has control. All people who enter the Contractor's Operational Area must undertake two inductions. The Contractor will be inducted onto each waste facility site by the Council's representative. The Contractor must also provide a supplementary induction immediately following the general site induction for all personnel including the Contractor's employees, the Council's personnel, and sub-contractors.

For the purposes of undertaking the services, the Council will make existing amenities at all sites available to the Contractor, at no charge.

All other facilities will be provided by the Contractor at their cost.

4.11 Access by the Council

The Contractor must not block access to any plant or equipment around the green waste storage area and associated plant and equipment in that area.

5. Specific Requirements of the Contract**5.1 Contractor's Organisation**

The Contractor must provide sufficient staff to perform the work required. The Contractor must ensure that all staff possess the appropriate skills and experience in relation to their duties and the conditions for operating at the nominated waste facilities.

The Contractor must supply copies of all current and on-going staff qualifications, licensing and authorities relevant to the performance of this contract for the inspection and approval of the Council.

The Contractor is responsible for the proper and lawful conduct of persons employed by the Contractor in the undertaking of the Works and must engage a responsible representative to supervise the operation of the Works.

Should the Contractor for any reason have a requirement to change organisational arrangements, including replacement of staff or provision of additional staff, the Contractor must immediately request the Council's representative's approval, providing details of and reasons for the changes. The Council's approval will not be unreasonably withheld or delayed.

The Contractor must ensure that replacement staff have appropriate relevant experience and skills.

5.2 Sustainability

The Contractor must at all times manage the green waste under this contract in a manner which does not create a future environmental, financial or social liability for the Council.

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council
5.3 Environmental Management

The Contractor must take all reasonable steps to ensure that the environment and the community are protected. The Contractor must actively strive to operate in a manner which does not cause community complaints, and which promptly and effectively responds to complaints that are made.

The Contractor must comply with all relevant provisions of Council’s Environmental Authority EPPR00597513 as it pertains to its operations on the individual waste facilities.

The Contractor must not cause nuisance through the emission of odour, noise, dust or cause environmental pollution from any part of its operations.

The Contractor must abide by all state and federal laws and regulations pertaining to environmental protection at all times

The Contractor must comply with any conditions relating to activities carried out under this Contract imposed at any time by regulatory authorities, whether imposed on the Contractor or on the Council.

The Contractor must abide by all instructions relating to environmental issues given by the Council.

The Contractor must maintain a complaints register that must be presented to the Council upon request. The Contractor must report all incidents of environmental release, nuisance, contamination or disturbance to the Council within twenty-four hours of the occurrence of such an event.

Nuisance is defined as any verified complaint from a member of the public or observed impact by the Council.

The Contractor may be required to seek an Environmental Authority from the Department of Environment and Science (DES) (or any other relevant approval) subject to proposed activities and processes to be conducted on-site. Such approvals will be at the cost of the Contractor.

5.4 Working Hours

The Contractor must not process or remove green waste at any of the nominated waste facilities outside the working hours specified in table 3 below without the written approval of the Council. The Contractor must apply in writing to the Council no later than 5 business days prior to the need arising to work outside these hours. All Waste Facilities are closed on Good Friday and Christmas Day.

Table 3

Waste Facility	Working Hours
Kirknie Landfill	Monday to Friday: 8.30am to 4.30pm Saturday: 8.00am to 12.00pm
Ayr Transfer Station	9.00am to 5.00pm daily
Home Hill Transfer Station	10.00am to 5.00pm daily
Giru Transfer Station	Friday & Sunday: 3.00pm to 6.00pm

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

5.5 Fire Control

Fire is a major risk and concern to the waste facilities. The Council's representative must be notified immediately of the outbreak of any fire within the Contractor's operational area and any fire risk that may come to the notice of the Contractor.

The Contractor must take all necessary precautions to prevent the occurrence of fires during green waste processing activities and have suitable safe work procedures to address risks and response to such occurrences.

The Council shall not be liable for any damage caused to the Contractor's plant and equipment in the case of fire.

Stockpiles / windrows are to be located on site adjacent to bulk green disposal areas or in a location on site as directed by the Council's representative or removed from site in accordance with the Council's direction and with the agreed schedule of rates.

Any stockpile of processed green waste at all times must be:

- windrowed to a maximum height of 2.5 metres;
- spaced (minimum of 6 metres) to provide fire breaks between windrows, unprocessed green waste and onsite vegetation;
- maintained at less than 2000m³; and
- continuously monitored to ensure the risk of fire is kept to an absolute minimum.

5.6 Separate Contractors

The Contractor is required to work concurrently with other works or services to be performed on the same site(s).

The Contractor must co-operate with separate contractors and use its best endeavours to facilitate the execution of the Services and the work of the separate contractors by these parties.

5.7 General Workplace Health and Safety Requirements

Council has a duty under current legislation to ensure the health and safety, so far as is reasonably practicable, of its employees and contractors, as well as members of the public. A copy of the Burdekin Shire Council Work Health and Safety Commitment Statement is attached to this document.

The Contractor and any subcontractors that may be engaged by Council to deliver goods and services as specified in this Contract shall ensure that their duty or duties that apply under the Work Health and Safety legislation are fulfilled at all times.

The Contractor must identify and exercise all necessary precautions for the health and safety of all persons. This includes the employees of the Contractor, Council employees, other contractors to Council and members of the public who may be affected by the delivery of the goods and services.

Council will retain overall safety management of the worksite, and will work in collaboration with the contractor and any subcontractors to ensure the work is performed in a safety manner. The Contractor must comply with any and all directions by Council relating to WH&S. The Contractor will comply with any work health and safety procedures or control measures implemented by Council at any premises within which the Contractor will perform works under this contract.

Legislative Compliance

The Contractor must comply with and ensure that its employees, subcontractors and agents comply with all Queensland Legislation, including and not limited to Work Health & Safety Act 2011 and Electrical Safety Act 2002 and all supporting Regulations, Codes of Practice, and Australian Standards that are in any way applicable to the safe supply of goods and services. Failure to comply will result in the goods and/or services being supplied at the time being withdrawn from service.

If requested, the Contractor must provide work health and safety information that is relevant to the goods and services being supplied. This information must demonstrate compliance under the current Work Health and Safety Act, Regulations and any other relevant legislation, codes of practice and Australian Standards.

Work Health and Safety Documentation

The Contractor must have suitable health and safety documentation to support their safe supply and operations for the engagement with Council. A Certified Work Health and Safety Management System is encouraged but not a requirement.

The type of health and safety documentation required by Contractors will be appropriate for the type of activities that are being conducted and meet WHS duties under the legislation. The Council reserves the right to modify, amend or request changes to content and format of procedures to ensure compliance with the relevant Legislation.

Contractor may be requested to supply any of the following types of health and safety documentation associated with the activities being conducted:

- Work Health and Safety Policy
- Risk Management process to identify and control safety hazards
- Risk assessments conducted on activities, plant or equipment
- Documented safe systems of work, such as Safe Work Procedures or Safe Work Method Statements for the activity being performed
- Safety training records, including inductions, licenses, competencies, etc.
- Chemical Register and Safety Data Sheets for all chemicals present on a Council work site
- Traffic Management Plan – managing vehicle and mobile plant interactions
- First aid management plan
- Incident reporting and investigation processes and outcomes
- Emergency procedures for the appropriate piece of equipment
- Plant servicing and maintenance records
- Site Induction form and register

The Contractor shall prepare and supply a risk assessment prior to commencing the works under the contract.

The contractor shall establish a designated work zone to provide separation between the activities and members of the public in consultation with the Authorised Officer.

Notification of Incidents

The Contractor must report all incidents, regardless of severity, that occur in the engagement of services or supply of goods to Council. The reporting of all incidents will initially be verbally

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

conveyed to the Authorised Representative as soon as being made aware of the incident. A documented incident report will then need to be completed prior to the end of the work shift, or prior to the commencement of work the following day at the latest allowable period. This will enable Council to review and possibly instigate/assist incident investigations which will allow possible follow up and corrective actions to be implemented. Such records may be requested and inspected by Council at any reasonable time.

Breaches to Safety Compliance

If a Contractor has been witnessed or identified not conducting work in a safe manner or not following relevant safety procedures or risk assessments, the Council will direct the Contractor to promptly remedy the breach or direct the Contractor to suspend work until the Contractor satisfies the Authorised Representative for Council that the work can resume in a compliant and safe manner.

Work suspended due the safety breaches on the behalf of the Contractor, including all subcontractors to the Contractor, will be at the cost of the Contractor.

Repeated breaches or the inability to remedy a safety breach may result in the termination of this contract.

5.8 Maintenance of Split Set Down Faces

The Contractor must ensure the effective management of the green waste area and provide adequate resources to establish and maintain spilt set down faces during times when plant is working in the drop-off area. The Contractor must ensure that the risk of any conflict between plant and customers is adequately controlled at all times.

5.9 Incident Response

An incident is defined as any occurrence which is not in accordance with the requirements of this specification.

The Contractor must immediately advise the Council of any incident.

The Contractor must develop and put in place incident response procedures. These procedures must be developed to minimise the severity of any incident and fix the incident with the minimum impact possible. The Contractor must ensure that the incident response procedures as a minimum have the following aspects:

- incident response manager;
- key people inside and outside the Contractor's organisation who must be contacted;
- procedures to deal with different incidents; and
- incident debrief, analysis and avoidance review.

The Contractor must ensure that the incident response procedures and personnel are available at all times.

The Contractor must ensure that the incident response manager or delegated representative remains at the site of the incident until the situation is resolved and remedial action is taken

5.10 Performance Management System**5.10.1 Development of Key Performance Indicators**

The Performance Management System set out in Clause 7 is comprised of a range of Key Performance

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

Indicators to measure the Contractor's performance throughout the Contract Term.

The intent of the Performance Management System is to have a fair and equitable manner of measuring performance and encouraging continuous improvement of the Services under this Agreement. It is not intended to unfairly disadvantage either party, save that it may be used in acknowledging good performance and providing incentive to limit poor performance.

5.10.2 Change to Key Performance Indicators

In reviewing the Key Performance Indicators, the parties must consider to what extent the Key Performance Indicators will be used to encourage performance by taking account of the disbenefit to Council of declining performance through:

- Fee adjustments under clause 6.4; or
- Requiring the Contractor to address particular areas of non-performance within a stated time frame

5.10.3 Measuring performance

Council will review the performance of the Contractor against the Key Performance Indicators and determine the Contractor's performance against the benchmark. Where applicable, the Services Fee payable may be adjusted in accordance with clause 6.4 and reference to Section 7 and applicable penalties.

5.10.4 Council's rights not affected

The application of the Performance Management System, including any adjustment to Services Fee payable, in relation to poor performance or non-performance by the Contractor will not limit or affect Council's rights under Part 4 clause 17 or any other provisions of this Agreement in relation to such poor performance or non-performance

6. Measurement and Payment

6.1 Volumetric Certification

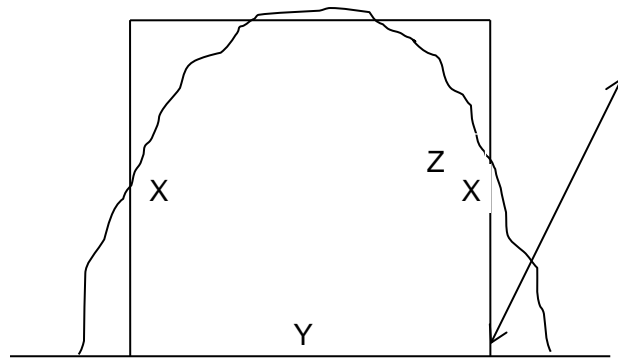
The Contractor must certify the volume of green waste processed at each site and maintain a register of these dockets. These must be provided to the Council with all invoices. The dockets must include the following details as a minimum:

- identification (batch) number;
- date green waste processed;
- date green waste removed from site (if ordered);
- licence number of vehicle transporting green waste (if ordered);
- volumetric measure;
- an independent signatory to verify the volume; and
- the independent signatory shall be a Council representative.

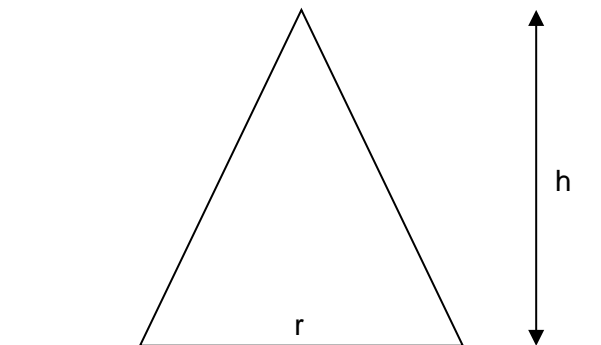
6.2 Measurement.

The measurement shall occur in the presence of the Council's representative. The volume of processed green waste shall be calculated by using one of the following equations:

$$\text{Volume} = X * Y(\text{width}) * Z (\text{length}) \text{ (refer to diagram below)}$$



Cone Volume = $\frac{1}{3}\pi r^2h$ (refer to diagram below)



The calculation shall be performed no earlier than 48 hours after the completion of the mulching process.

6.3 Payment

The Contractor must provide rates for processing of the green waste as required in Part 3 (Tender Response) of this tender. Payment of the services fee will be made on the quantity of cubic metres of mulched product left on-site and retained by the Council or mulched and removed **only on full completion of requested service** (including on site haulage requests.)

The Contractor shall issue invoices to the Council at the rates stipulated in the price schedule included Part 3 (Tender Response) of this tender.

The Contractor **is not entitled to be paid** (under this Agreement or otherwise) for any costs incurred by it in performing its obligations under this section if:

- The Contractor has failed to correct or re-perform those Services within the timeframe specified in section 4.5 of this specification.
- The Contractor has failed to correct or re perform those Services to a satisfactory standard.
- The Contractor has failed perform any services in accordance with the requirements of this Agreement.

Council may have the correction or re-performance of those Services carried out by others at the Contractor's cost.

6.4 Fee Adjustment

The Contractor's entitlement to payment of the Services Fee under clause 6.3 is subject to the Contractor's continuing compliance with the requirements of this Agreement.

In the event of non-performance as measured through the Performance Management System the Services Fee payable will be adjusted in accordance with section 7 of this specification.

Any notice or certificate issued by Council for the purpose of invoking this clause must specify in reasonable detail the cause and calculation of the reduction, having regard to the calculations referred to in section 7 of this specification.

The Contractor acknowledges that the potential reductions provided for in this clause and section 7 of this specification reflect the diminished value to Council of the failure to provide Services which comply with the requirements of this Agreement.

7. Performance

7.1 Performance Management System

If the Contractor fails to meet the requirements of any of the Key Performance Indicators that are listed in this clause, then the Services Fees that are otherwise payable to the Contractor under clause 6.3 may be adjusted by Council under the provisions of clause 6.4 as set out below, and deemed as 'Defective Services' as defined under Part 4 – Conditions of Contract in addition to any other right of the Council or obligation on the Contractor under this Agreement.

All adjustments are made to the total payment claim for service for each of the sites and tasks effected; and are not limited by the fee for any services provided unless that express provision is set out below.

7.1.2 Safety management - fails to comply with the Endorsed safety management plan for a Site.

Amount of reduction in Fee: \$100 per day on which any non-compliance and 10% of the final invoice for processing and any other service for the site (including reprocessing, removal or on site transport).

Limit to application of reduction: No Limit

7.1.2 Traffic management fails to comply with the Endorsed traffic management plan for a Site:

Amount of reduction in Fee: \$100 per day on which any non-compliance and 10% of the final invoice for processing and any other service for the site (including reprocessing, removal or on site transport).

Limit to application of reduction: No limit

7.1.3 Environmental management fails to comply with the Endorsed site management plan for a Site:

Amount of reduction in Fee: \$100 per day on which any non-compliance occurs and 10% of the final invoice for processing.

Limit to application of reduction: No limit

7.1.4 Commence service request or attend site as per agreed roster Fail to attend any requested or scheduled site/s or commence processing within 14 business days of service request or agreed roster.

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

Amount of reduction in Fee: \$100 per business day after the 14 business days allowed and 10% of the final invoice for processing.

Limit to application of reduction: No limit.

7.1.5 Process stockpiles. Fail to commence and complete processing the greenwaste stockpiles at the stipulated site within 14 business days of receiving from Council the notice to undertake that processing:

Amount of reduction in Fee: \$100 per business day after the 14 business days allowed and 10% of the final invoice for processing.

Limit to application of reduction: No limit.

7.1.6 Manage stockpiles Fail to manage stockpiles in accordance with section 5.5

Amount of reduction in Fee: \$100 per day on which any non-compliance occurs and 10% of the final invoice for processing.

Limit to application of reduction: No limit

7.1.7 Remove Processed Mulch/Stockpiles. Fail to remove mulch on request within 7 days following completion of processing at the site

Amount of reduction in Fee: \$100 per business day after the 7 business days allowed and 10% of the final invoice for processing.

Limit to application of reduction: No limit

7.1.8 Damage to pad or any associated infrastructure at Waste Facility. Causes or fails to report any damage caused to any Burdekin Shire Council plant, equipment, pad, drainage or any site infrastructure.

Amount of reduction in Fee: Nil payment until appropriate repairs/replacement are completed to the satisfaction of the Council.

Limit to application of reduction: No limit

8. Timetable for Procurement

* Place Advertisement in Newspaper	25 th July 2018
* Closing Time	10.00am 15 th August 2018
* Evaluation of Tender Responses	15 th August –29 th August 2018
* Contractor Notification/Letter of Acceptance	5 th September 2018
<i>*Dates are subject to alteration by the Council in its discretion.</i>	

9. Additional Information

Environmental Authority EPPR00597513
Kirknie Landfill Site Management Plan

10. Australian Standards

The applicable Australian Standard is The Australian Standard General Conditions of Contract, AS4920 – 2003 and amendment No.1 (2005) forms part of this contract.

The Annexure to the General Conditions of Contract entitled “Annexure to AS4920 – 2003” is the Annexure referred to by any reference made to AS 4920 – 2003 or elsewhere in the Contract.

It is required that the services described in this Contract together with any associated or necessary services indicated by the scope be undertaken in accordance with this document.

Response Forms

Part 3

Burdekin Shire Council
(‘Principal’)

**Green Waste Processing for Burdekin Shire
Council**

Agreement No.: TBSC/18/005

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

Contents Page

1. Tender Response	3
2. Checklist	7
3. Selection Criteria	12
Appendix A Referees	15
Appendix B Subcontractors	16
Appendix C Quality Management System	17
Appendix D Non-Conforming Tender Summary	18
Appendix E Tenderer's Safety Record.....	19
Appendix F Tenderer's Work Health and Safety Management System	20
Questionnaire.....	20
Appendix G Tenderer's Environmental Management Plan Questionnaire	28
Appendix H Plant and equipment.....	29
Appendix I Schedule of current commitments	30
Appendix J Schedule of Experience	31

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

1. Tender Response

To: The Chief Executive Officer
 Burdekin Shire Council
 145 Young Street Ayr QLD 4807

FULL NAME/S OF TENDERER:	
STREET ADDRESS OF TENDERER: (For service of notices)	
ABN OF TENDERER:	
ACN OF TENDERER:	
TELEPHONE NO. OF TENDERER:	
FACSCIMILE NO. OF TENDERER: (For service of notices)	
POSTAL ADDRESS OF TENDERER: (For service of notices)	
EMAIL ADDRESS OF TENDERER:	
NATURAL PERSON AUTHORISED TO REPRESENT THE TENDERER: (If the Tenderer is a corporation)	
In response to RFT T.B.S.C. / 18 / 005 – Greenwaste Processing for Burdekin Shire Council.	

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

The Tenderer offers to supply the **Services** detailed in:

- (a) the Request for Tender and in particular the Specification; and
 - (b) the addenda issued after the date of issue of the Request for Tender as listed below,
- in accordance with the Contract and the representations of the Tenderer contained in this Tender Response and all attachments to this Tender Response.

ADDENDUM NO.	ADDENDUM DATE	SUBJECT OF ADDENDUM
.....
.....
.....

(Insert particulars of all addenda issued by the Principal)

This Tender Response (including the prices in Item 3-3, Price Information) is irrevocable for 90 days after the Closing Time unless extended by mutual agreement between the Tenderer and the Principal. All terms used in this Tender Response bear the meanings assigned to them in the Conditions of Tender, Specification, General Conditions of Contract and Special Conditions of Contract, as the case may be.

This Tender Response is dated the _____ day of _____ 20 _____

COMPLETE AND USE THIS EXECUTION CLAUSE IF THE TENDERER IS A CORPORATION:

THE COMMON SEAL of)
 ACN)
 is affixed in accordance with)
 its constitution in the)
 presence of:)

.....
 Secretary/Director

.....
 Director

.....
 Name of Secretary/Director (print)

.....
 Name of Director (print)

.....
 Witness

.....
 Name of Witness (print)

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

COMPLETE AND USE THIS EXECUTION CLAUSE IF THE TENDERER IS A CORPORATION BUT DOES NOT EXECUTE UNDER A COMMON SEAL:

EXECUTED by)
 ACN)
 by being signed by)
)
 a Director, and)
)
 , a Director/the Secretary in accordance with)
 section 127 of the *Corporations Act 2001* in)
 the presence of:)

.....
 Witness

.....
 Director

.....
 Name of Witness (print)

.....
 Name of Director (print)

.....
 Witness

.....
 Director/Secretary

.....
 Name of Witness (print)

.....
 Name of Director/Secretary (print)

COMPLETE AND USE THIS EXECUTION CLAUSE IF THE TENDERER IS A CORPORATION, DOES NOT EXECUTE UNDER A COMMON SEAL AND HAS A SOLE DIRECTOR/SECRETARY:

EXECUTED by)
 ACN)
 by being signed by)
)
 the sole Director/Secretary in accordance with)
 section 127 of the *Corporations Act 2001* in)
 the presence of:)

.....
 Witness

.....
 Sole Director/Secretary

.....
 Name of Witness (print)

.....
 Name of Sole Director/Secretary (print)

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

COMPLETE AND USE THIS EXECUTION CLAUSE IF THE TENDERER IS AN INDIVIDUAL:

SIGNED by)
)
)
 Print Name)
 in the presence of:)
 Signature

.....
 Witness

.....
 Name of Witness (print)

COMPLETE AND USE THIS EXECUTION CLAUSE IF THE TENDERER IS A PARTNERSHIP OF INDIVIDUALS (every partner must sign – add more spaces if necessary)

SIGNED by)
)
)
 Print Name)
 in the presence of:)
 Signature

.....
 Witness

.....
 Name of Witness (print)

SIGNED by)
)
)
 Print Name)
 in the presence of:)
 Signature

.....
 Witness

.....
 Name of Witness (print)

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

2. Checklist

The following checklist has been provided to assist the Tenderer with completion and submission of its Tender. Where it is necessary to provide additional information please ensure that all documents are clearly marked with the relevant attachment title to assist the evaluation panel with their assessment. All attachments must be clearly marked with the relevant paragraph number (e.g. “2.1 – Organisational Profile”).

All pages within Part 3 must be completed and returned to the Principal as they form part of the Tenderer’s Tender Response.

2.1 Organisational Profile

Attach a copy of the Tenderer’s organisation structure and provide background information on the Tenderer and label it “ 2.1 – Organisational Profile ”.	“ Organisational Profile ”	Tick if attached <input type="checkbox"/>
If corporations are involved, attach their current ASIC company extracts search including latest annual return and label it “ 2.1 – ASIC Company Extracts ”.	“ ASIC Company Extracts ”	Tick if attached <input type="checkbox"/>

2.2 Referees

Attach details of the Tenderers’ referees, and label it “ 2.2 – Referees ”. The Tenderer shall give examples of work provided for its referees where possible.	“ Referees ”	Tick if attached <input type="checkbox"/>
--	---------------------	--

2.3 Agents

Is the Tenderer acting as an agent for another party?	Yes / No	
If Yes, attach details (including name and address) of the Tenderer’s principal and label it “ 2.3 – Agents ”.	“ Agents ”	Tick if attached <input type="checkbox"/>

2.4 Trusts

Is the Tenderer acting as a trustee of a trust?	Yes / No	
If Yes, in an attachment labelled “ 2.4 – Trusts ”: a) give the name of the trust and include a copy of the trust deed (and all related documents);and b) provide the names and addresses of all beneficiaries of the trust.	“ Trusts ”	Tick if attached <input type="checkbox"/>

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council
2.5 Subcontractors

Does the Tenderer intend to subcontract any of the obligations of the Contractor under the Contract?	Yes / No	
If Yes, provide details in Appendix B: Subcontractors provide details of the subcontractor(s) including: a) the name, address and the number of people employed; and b) the obligations that will be subcontracted.	“Subcontractors”	Tick if attached <input type="checkbox"/>

2.6 Conflict of Interest

Will any actual or potential conflict of interest in the performance of the Tenderers’ obligations under the Contract exist if the Tenderer is awarded the Contract, or are any such conflicts of interest likely to arise during the Contract?	Yes / No	
If Yes, please supply in attachment details of any actual or potential conflict of interest and the way in which any conflict will be dealt with and label it “2.6 – Conflict of Interest” .	“Conflict of Interest”	Tick if attached <input type="checkbox"/>

2.7 Financial Position

Is the Tenderer presently able to pay all its debts in full as and when they fall due?	Yes / No	
Is the Tenderer currently engaged in litigation as a result of which it may be liable for \$50,000.00 or more?	Yes / No	
If the Tenderer is awarded the Contract, will it be able to fulfil the obligations of the Contractor under the Contract from its own resources or from resources readily available to it and remain able to pay all of its debts in full as and when they fall due?	Yes / No	
In order to demonstrate the Tenderer’s financial ability to undertake the Contract, in an attachment labelled “2.7 – Financial Position” include a profit and loss statement and the latest financial return for the Tenderer and each of the other proposed contracting entities, together with a list of financial referees from its bank and/or accountant.	“Financial Position”	Tick if attached <input type="checkbox"/>

2.8 Quality Assurance

Does the Tenderer have any documented quality assurance or quality assurance systems?	Yes / No	
If the Tenderer proposes to subcontract, does its subcontractor have a “third party” quality management system in place?	Yes / No	
Supply evidence or details of the Tenderer’s quality assurance position and where relevant of its supplier’s or subcontractor’s position, in an attachment labelled Provide details in Appendix C: Quality Assurance.	“Quality Assurance”	Tick if attached <input type="checkbox"/>

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council
2.9 Insurance Coverage

The insurance requirements for this Request for Tender are stipulated in the General Conditions of Contract. Tenderers are to supply evidence of their insurance coverage (including copies of certificates of currency) for every type of insurance specified below in an attachment labelled “ 2.9 – Insurance Coverage ”.		“Insurance Coverage”	Tick if attached <input type="checkbox"/>
Type	Value (\$)		
Public Liability	\$ 20,000,000		
Product Liability	\$ 5,000,000		
Professional Indemnity	\$ 5,000,000		
Workers Compensation	Evidence to be provided		

2.10 Electronic Copies of Tender

The Tenderer is required to provide an electronic copy of the Tender.	
The Tenderer has provided an electronic copy of the Tender?	Yes / No

2.11 Goods and Services Tax

Is the Tenderer registered or required to be registered under the GST Act?	Yes / No
--	----------

2.12 Non-Conforming Tenders

Has the Tenderer lodged a conforming Tender?	Yes / No	
Is this a non-conforming Tender?	Yes / No	
If yes, has the Tenderer prepared and lodged with this Tender, a clear summary of all points of difference between this Tender and the conforming Tender in Appendix D: Non-Conforming Tender Summary	Yes / No	
	“Non-Conforming Tender Summary”	Tick if attached <input type="checkbox"/>

2.13 Work Health and Safety

Tenderers must complete Appendix E: Tenderer’s Safety Record.	“Tenderer’s Safety Record”	Tick if attached <input type="checkbox"/>
Tenderers must complete Appendix F: Tenderer’s Work Health and Safety Management System Questionnaire.	“Tenderer’s Health & Safety Questionnaire”	Tick if attached <input type="checkbox"/>

2.14 Environmental

Tenderers must complete Appendix G: Contractor’s Environmental Management Plan Questionnaire.	“Tenderer’s Environmental Management Plan Questionnaire”	Tick if attached <input type="checkbox"/>
--	---	--

2.15 Plant and Equipment

Tenderers must complete Appendix H: Plant and equipment.	“Green waste plant and equipment”	Tick if attached <input type="checkbox"/>
---	--	--

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

2.16 Schedule of current commitments

Tenderers must complete Appendix I: Schedule of current commitments.	“Schedule of current commitments”	Tick if attached <input type="checkbox"/>
---	--	--

2.17 Experience

Tenderers must complete Appendix J: Schedule of Experience.	“Schedule of experience”	Tick if attached <input type="checkbox"/>
--	---------------------------------	--

2.18 Disclosure or Prior Anti-competitive Conduct

<p>Tenderers must indicate if they, or any corporation or person associated with their tender, including directors and senior management, are or have ever been subject to proceedings related to anti-competitive conduct in Australia or overseas.</p> <p>The Principal reserves the right, at its discretion, to exclude any tenderer from the procurement process if the tenderer, or any corporation or person including directors or senior managers associated with their tender, have ever contravened the anti-competitive provisions of the Trade Practices Act 1974 or equivalent laws in Australia or overseas.</p> <p>The Principal reserves the right, at its discretion, to exclude any tenderer from the procurement process if full disclosure of any or all contraventions of the anti-competitive provisions of the Trade Practices Act 1974 or equivalent laws in Australia or overseas has not been made.</p>	Yes / No	
<p>If Yes, in an attachment labelled: “2.18 – Anti – competitive Conduct” provide the following details:</p> <ul style="list-style-type: none"> (a) The names of the parties to the proceedings (b) The case number (c) The general nature of the proceedings (d) The outcome or current status of the proceedings 	“Anti – competitive conduct”	<i>Tick if attached</i> <input type="checkbox"/>

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

2.19 Anti-competitive Warranty

<p>Has the tender been prepared with any consultation, communication, contract, arrangement or understanding with any competitor, other than:</p> <ul style="list-style-type: none"> (a) where certain joint venture arrangements exist between the tenderer and a competitor (b) where the tenderer and a competitor have an agreement that has been authorised by the ACCC (c) where the tenderer has communicated with a competitor for the purpose of subcontracting a portion of the tender, and where the communication with that competitor is limited to the information required to facilitate that particular subcontract? <p>In such a situation the tenderer agrees to fully disclose the full nature and extent of any agreements with competitors to the tendering body. In the event that no such disclosure is made the tenderer warrants that their bid has not been prepared with any consultation, communication, contract, arrangement or understanding with any competitor regarding:</p> <ul style="list-style-type: none"> (a) prices (b) methods, factors or formulas used to calculate prices (c) the intention or decision to submit, or not submit, a bid (d) the submission of a bid that is non-conforming (e) the quality, quantity, specifications or delivery particulars of the products or services to which this call for bids relates (f) the terms of the bid. <p>The tenderer acknowledges that if the Principal accepts the tenderer's offer and completes any contract the Principal will do so in reliance of this warranty.</p>	<p>Yes / No</p>	
<p>If Yes, in an attachment labelled: "2.19 – Anti – competitive warranty". provide the following details:</p> <ul style="list-style-type: none"> (a) The full nature and extent of any agreements with competitors. 	<p>"Anti – competitive warranty"</p>	<p><i>Tick if attached</i> <input type="checkbox"/></p>

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

3. Selection Criteria
3.1 Compliance Criteria

Please select with a yes or no whether the Tenderer has complied with the following compliance criteria:

Description of Compliance Criteria	
(a) Compliance with the Specification contained in the Request for Tender.	Yes / No
(b) Compliance with the Conditions of Tender.	Yes / No
(d) Compliance with the Quality Assurance requirement for this Request for Tender.	Yes / No
(e) Compliance with lodgement of this Tender Response by the Closing Time.	Yes / No
(f) Compliance with and completion of Item 3.3 Price information.	Yes / No

3.2 Qualitative Criteria

Before responding to the following qualitative criteria, Tenderers must note the following:

- All information relevant to the Tenderers' answers to each criterion must be contained within its Tender Response;
- Tenderers are to assume that the evaluation panel has no previous knowledge of the Tenderer's organisation, its activities or experience;
- Tenderers must provide full details for any claims, statements or examples used to address the qualitative criteria; and
- Tenderers must address each issue outlined within a qualitative criterion.

A) Value for Money >>	Weighting 80%	
Describe the Tenderer's experience in completing /supplying requirements similar to the requirements stated in the Specification. Tenderers must, as a minimum, address the following information in an attachment and label it "3.2 – Value for money": Relevant Experience' (a) Provide details of similar work; and (b) Detail the scope of the Tenderer's involvement including details of outcomes; and (c) Provide details of issues that arose during the project and how these were managed; and (d) Demonstrate sound judgement and discretion; and (e) Demonstrate competency and proven track record of achieving outcomes.	"Relevant Experience" Sub Weighting 15%	<i>Tick if attached</i> <input type="checkbox"/>
Key Personnel Skills and Experience (a) Their role in the performance of the Contract; and (b) Curriculum vitae; and (c) Membership of any professional or business association; and (d) Qualifications, with particular emphasis on experience of personnel in projects with a similar requirement; and (e) Any additional relevant information.	"Key Personnel" Sub Weighting 10%	
Tenderers' Resources (a) Plant, equipment and materials; and (b) Any contingency measures or back up of resources including personnel (where applicable).	"Tenderers Resources" Sub Weighting 15%	

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

Demonstrated Understanding (a) A project schedule/timeline (where applicable); and (b) The process for the delivery of the requirements of the Specification; and (c) Training processes (if required); and (d) A demonstrated understanding of the scope of works.	“Demonstrated Understanding” Sub Weighting 15%	
Price Refer to Price Schedule 3.3	“Price” Sub Weighting 25%	

B) The Development of Competitive Local Business and Industry >> Tenderers must provide details of their direct involvement in the development of competitive local business and Industry in an attachment and label it “3.2 – The Development of Competitive Local Business and Industry”: The following weighting score will apply: (a) Townsville region business* (a business that has its Head Office in Townsville Region) = 15 (100%) (b) Branch office** in the North Queensland region established for a minimum of 6 months directly employing a minimum of 10 FTEs = 12 (80%) (c) Branch office* in North Queensland region established for a minimum of 6 months directly employing less than 10 FTEs = 9 (60%) (d) Queensland business = 2 (13%) (e) Interstate business = 1 (7%) (f) Overseas business = 0 (0%) * Based on ABN or other relevant checks to validate supplier’s head office and branch locations. ** Branch office must constitute a physical address, not a post office box. Townsville Region is a supplier within the Local Government boundaries of Townsville, Charters Towers, Burdekin, Hinchinbrook and Palm Island. North Queensland region (State electorate(s)): Whitsunday, Burdekin, Hinchinbrook, Mackay)	Weighting Mandatory 15%	
	“The Development of Competitive Local Business and Industry”	Tick if attached <input type="checkbox"/>

C) Environmental Protection >> Tenderers should provide details of their environmental protection processes, Tenderers must, as a minimum, address the following information in an attachment and label it “3.2 – Environmental Protection”: (a) The use of environmentally friendly goods and services and where products are sourced from for example within Australia or overseas; and (b) Work Processes encourage environmentally responsible activity to lower environmental impact.	Weighting Mandatory 5%	
	“Environmental Protection”	Tick if attached <input type="checkbox"/>

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

3.3 Contract Price Basis

Price Schedule - Schedule of rates					
Site	Estimated Annual green waste received at waste facility 16/17 Financial Year (t)	Rate (\$ / m³)*			
		100% mulch left on-site and retained by the Principal	100% mulch transported off site by Contractor	50% mulch left on-site and retained by the Principal, 50% transported off-site by Contractor	25% mulch left on site and remove 75%
Kirknie Landfill	4000				
Ayr Transfer Station	7000				
Home Hill Transfer Station	5000				
Giru Transfer Station	100				
If Ordered Work					
Short Haul onsite cartage		If Ordered			
Shearing of logs greater than 300 mm diameter		If Ordered			
Regrind 100mm screen		If Ordered			
Regrind 75mm screen		If Ordered			
Regrind 50mm screen		If Ordered			
The Principal offers no guarantee of the quantity of Services that will be ordered for the above services					

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

Appendix A Referees

REFEREE NAME	COMPANY	PROJECT/TASK	CONTACT DETAILS

Appendix B Subcontractors

Set out any work intended to be sub-contracted and the names and addresses of proposed sub-contractors and suppliers. Acceptance of the Tender does not include approval to the intended work by sub-contract or proposed sub-contractors and suppliers. The provision of the General Conditions of Contract shall apply.

1. Suppliers

Name	Product/Service	Value of product/service	Suppliers/Quality System Details

2. Sub-Contractors

Name	Activity	Value of product/service	Sub-Contractors/Quality System Details

Tenderer's name _____

Tenderer's Signature _____

Witness _____

Date _____

Appendix C Quality Management System

1. Does your Company have a Quality Management Plan or Manual?	Yes
	No
2. Does your Company have documented Quality Procedures?	Yes
	No
3. Does your Company have a Quality Management System based on the internationally recognised standard ISO 9001?	Yes
	No
4. Has a third party audited your Company Quality Management System?	
5. Has a third party accredited your Company Quality Management System?	Yes
	No
	No
6. Does your Company undertake internal Quality Assurance audits?	Yes
	No

By Whom

By Whom

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

Appendix D Non-Conforming Tender Summary

This tender **does/does not** (delete as appropriate) fully conform to the tender documents.

1. The Tenderer shall state in the Schedule of Compliance whether he/she fully complies with the specification or list all items of non-compliance. Where Tenderer states non – compliance he/she should indicate alternative offered. Include innovative offer descriptions here.
2. Where an alternative to any specified equipment or materials is offered it shall be approved as equivalent by Burdekin Shire Council prior to substitution.
3. Add sheets as necessary

Tender Clause	Details of Tenderers Non conformance	Tenderer's Comments

Tenderer's name

 Tenderer's
 Signature

Witness

Date

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

Appendix E Tenderer's Safety Record

Provide details of incidents that have occurred over the last 12 months while undertaking green waste processing

Date	Location	Description of Incident	Outcomes/Actions completed by contractor & details of any infringements issued

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Appendix F Tenderer's Work Health and Safety Management System**Questionnaire**

This questionnaire forms part of the Principal's tender evaluation process and is to be completed by Tenderers.

The objective of the questionnaire is to provide an overview of the status of the Tenderer's safety management system. Tenderers may be required to verify the responses noted in the questionnaire by providing evidence of their ability and capacity in relevant matters.

WHS Policy and Management >>

Does the Tenderer have a written health and safety policy? **Yes** **No**

If Yes, provide a copy of the policy.

Comments

Does the Tenderer have an WHS Management System? **Yes** **No**

If Yes, provide details.

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

WHS Policy and Management - Continued >>

Is the WHS Management System audited or reviewed on a regular basis? **Yes** **No**
If Yes, provide details of last audit and outcomes.

Does the Tenderer have a WHS organisation chart? **Yes** **No**
If Yes, provide a copy.
Comments

Are health and safety responsibilities clearly identified for all employees? **Yes** **No**
If Yes, provide details.

Are line managers held accountable for health and safety performance? **Yes** **No**
If Yes, provide details.

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

Safe Work Practices and Procedures >>

Has the Tenderer prepared safe operating procedures or specific safety instructions relevant to its operations?

 Yes **No**

If Yes, provide a summary listing of procedures or instructions.

Comments

Are safe operating procedures or specific safety instructions issued to employees?

 Yes **No**

If Yes, please explain how this is done.

Does the Tenderer have any permit to work systems?

 Yes **No**

If Yes, provide a copy of a permit

Which personnel of the Tenderer are responsible for investigating incidents?

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

Safe Work Practices and Procedures >>

Do incident reports contain prevention recommendations?

 Yes **No**

Who is responsible for implementing remedial measures recommended?

Are there procedures for maintaining, inspecting and assessing the hazards of plant operated/owned by the Tenderer?

 Yes **No**

If Yes, provide details.

Are there procedures to storing and handling hazardous substances?

 Yes **No**

If Yes, provide details.

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Work Health & Safety Training>>

Describe how safety and health training is conducted by the Tenderer?

 Yes **No**

Provide a summary or examples of safety and health training courses provided for, or undertaken by employees during the past 12 months.

Is a record maintained of all training and induction programs undertaken for employees of the Tenderer?

 Yes **No**

If Yes, provide examples of safety training records.

Provide details of any safety induction programs for employees and or/sub-contractors of the Tenderer.

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

Safety and Health Work Inspections >>

Are regular health and safety inspections at work sites undertaken?
If Yes provide details.

Yes **No**

Is a standard workplace inspection checklist used to conduct health and safety inspections?
If Yes, provide details or examples.

Yes **No**

Who normally completes work safety and health inspections?

How are work safety and health inspection reports dealt with?

Is there a procedure by which employees can report hazards at workplaces?
If Yes, provide details.

Yes **No**

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

Safety and Health Consultation >>

Is there a work safety and health committee?
If Yes, provide details.

Yes **No**

Are there guidelines on procedures governing the safety committee operation?

Yes **No**

Are there employee elected health and safety representatives?
If Yes, provide details.

Yes **No**

Does the Tenderer have a company safety officer?
Comments:

Yes **No**

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

Safety and Health Performance Monitoring >>

Is there a system for recording and analysing safety performance statistics? **Yes** **No**

If Yes, provide details.

Is safety performance on the agenda for management meetings? **Yes** **No**

If Yes, provide details.

Is senior management involved in the analysis of safety performance statistics? **Yes** **No**

Has the Tenderer ever been convicted of an occupational health and safety offence? **Yes** **No**

If Yes, provide details.

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Appendix G Tenderer's Environmental Management Plan Questionnaire
The Tenderer shall provide full details as required with its tender.

1.	Has a third party accredited your Company Environmental Management system?	YES
		NO
2.	Does your Company have an approved Environmental Management manual?	YES
		NO
3.	Is your Environmental Management system based on a recognised standard?	YES
		NO

By whom: _____

State Which: _____

If you have answered YES to both questions 1 and 3, go to question 8

4.	Does your Company have documented Environmental Management procedures?	YES
		NO
5.	Has a third party audited your Company Environmental Management system?	YES
		NO
6.	Are records of inspection, test and other Environmental Management activities maintained?	YES
		NO
7.	Does your Company undertake internal Environmental Management audits?	YES
		NO
8.	Does your Company agree to allow access for an initial assessment?	YES
		NO

By whom: _____

Tenders must provide examples of your Environmental Management System.

Tenderer's name _____

Tenderer's Signature _____

Witness _____

Date _____

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

Appendix H Plant and equipment

The Tender shall provide details of the green waste plant and equipment owned by the Tenderer and plant and equipment which shall be used for this contract.

Green Waste Plant and Equipment Owned by the Tenderer

Equipment	Type	Size/capacity	Other
Trucks			
Additional carriages			
Loaders			
Mulcher/s			
Shears (and associated machinery)			
Other (add as needed)			

Green Waste Plant and Equipment used for this Tender

Equipment	Type	Size/capacity	Other
Trucks			
Additional carriages			
Loaders			
Mulcher			
Shears (and associated machinery)			
Other (add as needed)			

Tenderer's name

Tenderer's Signature

Witness

Date

Appendix I Schedule of current commitments

All entries will be treated as strictly confidential

Authority or Owner for Whom Work is being Executed	Phone No. and Contact Name of Owner/Agent	Location	Description of Work	Total Cost of Contract	Value of Work Not Yet Completed	Specified Completion Date

Tenderer's Name _____

Tenderer's Signature _____

Date Prepared _____

Appendix J Schedule of Experience

The Tenderer shall set out relevant experience of the organisation and the key personnel involved in the design, construction and commissioning of the works.

1. Projects undertaken by the Tenderer of a similar nature to the proposed work.

Client	Contact	Nature of the Work	Contract Value	Contract Period

2. Personnel Experience

Name	Qualifications	Position with the Company	Responsibility on this Project	Experience

General Conditions of Contract

Part 4

**Burdekin Shire Council
(‘Principal’)**

**Green Waste Processing for Burdekin Shire
Council**

Agreement No.

TBSC/18/005

Contents Page

1. Construction of Contract	3
2. Definitions.....	3
3. Term	5
4. Evidence of Contract	6
5. Supply of Services by Order	6
6. Quality of Services.....	7
7. Supply of Services	7
8. Insurance.....	10
9. Defective Services	12
10. Obligations of Contractor	12
11. Variation of Services	12
12. Invoicing	13
13. Payment	14
14. Temporary Suspension of Services	15
15. Variation Price	15
16. Duty	15
17. Goods and Services Tax.....	15
18. Termination.....	15
19. Dispute Resolution.....	16
20. Clauses to Survive Expiration or Termination	17
21. Intellectual Property Rights	17
22. Release and Indemnity	18
23. Conflict of Interest.....	19
24. Confidentiality	19
25. Assignment.....	20
26. Negation of Employment Agency Etc.....	20
27. Notices	20
28. Force Majeure	21
29. Authorised Officer	21
30. Security and Access	22
31. Industrial Disputes	22
32. Right of Information and Disclosures	22
33. Information Privacy	22
34. Miscellaneous.....	23

1. Construction of Contract

- 1.1 A reference to a party to the Contract includes:
- a) in the case of a natural person, that person and his/her personal representatives and assigns (transferees); and
 - b) in the case of a corporation, the corporation, its successors and assigns (transferees).
- 1.2 Where a party is composed of 2 or more persons, each item of agreement by the party binds:
- a) all of those persons collectively; and
 - b) each of them as an individual.
- 1.3 A reference to:
- a) the singular includes the plural, and vice versa;
 - b) a gender includes each other gender;
 - c) a person includes a corporation, a firm, and a voluntary association;
 - d) an Act includes an Act that amends, consolidates or replaces the Act;
 - e) a section or other provision of an Act includes a section or provision that amends, consolidates or replaces the section or provision;
 - f) money is a reference to Australian dollars and cents;
 - g) a time of day is a reference to Australian Eastern Standard Time;
 - h) a document includes, but is not limited to, any drawing, specification, material, record or other means by which information can be stored or reproduced.
- 1.4 Clause headings exist for convenience only and are to be disregarded when interpreting the Contract.
- 1.5 All information delivered as part of the Services supplied under the Contract must be written in English. Where any document is a translation into English, the translation must be accurate.
- 1.6 If a provision of the Contract is void, voidable, illegal or unenforceable, the provision will be deemed deleted from the Contract.

2. Definitions

- 2.1 In the Contract, except where the context otherwise requires:

‘Act’ means an Act passed by the Commonwealth Parliament or the Queensland Parliament and includes subordinate legislation under an Act.

‘Authorised Officer’ see Clause 29.1.

‘Clause’ means a clause of the Contract.

‘Contract’ means the document which constitutes or evidences or, as the case may be, all the documents which constitute or evidence the final and concluded agreement between the Principal and the Contractor.

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

‘Contract Commencement Date’ means from the date of the Letter of Acceptance

‘Contract Expiry Date’ means 2 years from the date of the Letter of Acceptance

‘Contract Material’ means New Contract Material and Existing Contract Material.

‘Contract Price’ means:

- a) where payment is to be made on a lump sum basis, the sum which is stated in the Contract to be payable to the Contractor for the supply of the Services by the Contractor and the performance of the obligations of the Contractor under the Contract; and
- b) where payment is to be made on a schedule of rates basis, the sum ascertained by calculating the product of the rates and the corresponding quantities set out in the schedule of rates and adding to the sum thereof the total of any lump sums, provisional sums, contingency sums or other sums included in the schedule of rates; and
- c) where payment is to be made on a lump sum and a schedule of rates basis, the aggregate of the sums referred to in paragraphs (a) and (b),

but excluding any additions or deductions, which may be required to be made pursuant to the Contract.

‘Contractor’ means the party whose Offer to supply the Services is accepted by the Principal (by Letter of Acceptance).

‘Defective Services’ see Clause 9.1.

‘Dispute Notice’ see Clause 19.2.

‘Existing Contract Material’ means any material that exists at the commencement of the Contract and which is provided in connection with the Contract.

‘Extension Period’ means a maximum of thirty six months from the initial contract expiry date to be exercised in three separate twelve month periods with approval of both Principal and Contractor

‘Force Majeure’ means anything outside the control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, and acts (including laws, regulations, disapprovals or failures to approve) of any statutory authority.

‘General Conditions of Contract’ means these General Conditions of Contract.

‘Services’ means services, tasks, work and requisites the subject of the Contract which are more particularly described in the Specification including all variations to the services, tasks, work and requisites provided for by the Contract or such of them as shall be described in an Order.

‘GST’ means the goods and services tax under the GST Act.

‘GST Act’ means A New Tax System (Goods and Services Tax) Act 1999 and includes other GST related legislation.

‘Intellectual Property Rights’ means all copyright, patents and all rights in relation to inventions, trademarks and designs or any rights to registration of such rights, whether created before, on or after the date of the Contract.

‘Letter of Acceptance’ means a letter from the Principal to the Contractor advising the Contractor of the Principal’s acceptance of the Offer.

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

‘Local Government’ means a local government for a local government area described by regulation under the Local Government Act 2009.

‘Moral Rights’ means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the Copyright Act 1968, and rights of a similar nature anywhere in the world whether existing before commencement of the Term or which may come into existence on or after the date of the Contract.

‘New Contract Material’ means any material provided in connection with the Contract that is created, written or otherwise brought into existence by or on behalf of the Contractor in the course of performing the Contract.

‘Offer’ means the written offer (in the form of the Tender Response) submitted to the Principal by the Contractor to provide the Goods and Services and, if applicable, as amended in writing by any post offer negotiations.

‘Order’ means an order for Services placed by the Principal with the Contractor under the terms of the Contract and ‘Ordered’ has a corresponding meaning.

‘Personal Information’ has the meaning given in the Information Privacy Act 2009.

‘Principal’ means Burdekin Shire Council.

‘Request for Tender’ means the Request for Tender given to prospective tenderers inviting offers to tender for the supply of the Goods and Services of which these General Conditions of Contract form part.

‘RTI Act’ means the Right to Information Act 2009.

‘Services’ means the services, tasks, work and requisites the subject of the Contract which are more particularly described in the Specification including all variations to the services, tasks, work and requisites provided for by the Contract or such of them as shall be described in an Order

‘Special Conditions of Contract’ means the Special Conditions of Contract included in the Request for Tender.

‘Specification’ includes any specification included in the Request for Tender.

‘Term’ means the period for which the Contract will be in effect as specified in Clause 3, including any period of extension under Clause 3.

3. Term

- 3.1 The Term of the Contract shall begin on the Contract Commencement Date and expire on the Contract Expiry Date unless:
- terminated earlier in accordance with the terms and conditions of the Contract; or
 - extended by the Principal for the Extension Period.
- 3.2 The Principal may, in its sole discretion, by written notice (an “Extension Notice”) to the Contractor given not less than 1 month prior to the Contract Expiry Date extend the Term by the Extension Period.

4. Evidence of Contract

- 4.1 The Contract between the Principal and the Contractor is constituted by the following documents:
- a) Order;
 - b) Letter of Acceptance;
 - c) Specification;
 - d) Special Conditions of Contract;
 - e) General Conditions of Contract;
 - f) Offer; and
 - g) correspondence passing between the Principal and the Contractor clarifying any aspect of the Request for Tender.
- 4.2 Where there arises any inconsistency or ambiguity between provisions in the different documents which constitute the Contract, the order of precedence to resolve the inconsistency or ambiguity shall be from document (a) to (g) in Clause 4.1.
- 4.3 After formation of the Contract, the Principal may deliver a completed Contract to the Contractor. Within 14 days after the date of delivery of the completed Contract to the Contractor, the Contractor must execute and return the completed Contract to the Principal for execution by the Principal. The Principal may extend the period for execution of the completed Contract by giving written notice to the Contractor.

5. Supply of Services by Order

- 5.1 Where an Order is placed with the Contractor, the Contractor must supply Services:
- a) in accordance with the terms and conditions of the Order; and
 - b) that comply with the Specification.
- 5.2 The Contractor must supply all Orders for Services placed by the Principal during the Term.
- 5.3 The Principal may Order:
- a) any 1 type or item of the Services; and
 - b) Services in 1 lot or instalments or in such quantities as may be required from time to time.
- 5.4 Where the Contractor receives an Order from a person other than the Authorised Officer the Contractor must:
- a) not supply the Services identified in the Order; and
 - b) refer the Order to the Authorised Officer.
- 5.5 The Contract does not confer on the Contractor an exclusive right to supply the Services to the Principal.
- 5.6 The Principal may obtain the Services or any part of the Services from an alternate supplier at any time during the Term

6. Quality of Services

- 6.1 Unless the Specification states otherwise, all Services supplied must be in accordance with Australian Standards where such exist. Where an Australian Standard does not exist the relevant ISO Standard shall apply.
- 6.2 If no sample or standard is stated in the Specification, the Services must be of the highest standard and carried out promptly with all due skill, care and diligence.
- 6.3 The Contractor must:
- a) engage and retain personnel who are able to competently provide the Services;
and
 - b) ensure that all personnel engaged in the supply of the Services have all skills and qualifications necessary to supply the Services; and
 - c) consult regularly during the Term with the Principal (through the Authorised Officer and the Contractor's representative).

7. Supply of Services

- 7.1 The Contractor must supply the Services punctually. However, if a time for supply of the Services is stated in an Order or the Contract, the Services must be supplied within the time stated in the Order or the Contract, as the case may be.
- 7.2 Time shall be of the essence in all cases.
- 7.3 Upon it becoming evident to the Contractor that supply of the Services is likely to be delayed, the Contractor must promptly notify the Principal in writing. Such notification shall not release the Contractor from its obligation to supply the Services by the due date or from any other obligation under the Contract, unless the Principal agrees in writing. The Contractor shall not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with any delay.
- 7.4 The Contractor shall not be entitled to any extension of time for supply of the Services except with the prior written consent of the Principal. The Principal may in its sole discretion:
- a) grant its consent; or
 - b) refuse its consent.
- .

8. Insurance

- 8.1 The Contractor must have and maintain:
- a) insurance under the Workers' Compensation and Rehabilitation Act 2003 to cover workers, eligible persons, self employed contractors, directors, trustees and partners; and
 - b) public liability insurance in an amount not less than \$20,000,000.00 in respect of any one occurrence and for an unlimited number of claims; and
 - c) product liability insurance in an amount not less than \$5,000,000.00 in respect of any one occurrence and for an unlimited number of claims; and
 - d) professional indemnity insurance in an amount not less than \$5,000,000.00.
- 8.2 The Contractor must, upon receipt of a written request at any time from the Principal, produce evidence that the insurances required by this Clause 8 have been effected and maintained.
- 8.3 Each public liability insurance policy must either insure the Principal and the Contractor severally, for their respective entitlements and interests under the Contract, and for this purpose accept that the insured comprises at least the Principal and the Contractor as if a separate insurance policy were issued to each of them (but not so as thereby to increase the sum insured) or be endorsed to note the interest of the Principal under the Contract.
- 8.4 Each insurance policy must:
- a) limit the insurer's entitlement to avoid the policy to be available only against whichever of the insured has actually breached its obligation of disclosure or an obligation under the policy; and
 - b) cover the Contractor's liability upon the obligations it has assumed and the indemnities it has given in the Contract; and
 - c) contain no exclusions, endorsements or alterations not approved in writing by the Principal (that approval not to be unreasonably withheld); and
 - d) contain an undertaking by the insurer to notify the Principal in writing not later than 30 days before it terminates or materially alters the policy; and
 - e) otherwise contain provisions acceptable to, or required by the Principal (but the Principal may not require unreasonably the inclusion, retention, modification or exclusion of a provision); and
 - f) remain current at all times during the Term.
- 8.5 If the Contractor is obliged to have and maintain professional indemnity insurance, the policy of insurance must cover the Contractor and its servants and agents for liability under the Contract for the amount specified in Clause 8.1. The Contractor must maintain the professional indemnity insurance on terms and conditions no less favourable to the Principal than those approved under this Clause 8, for the Term and, after expiry or termination of the Contract upon request in writing.
- 8.6 If an insurance policy obtained by the Contractor provides for a deductible, the Contractor indemnifies the Principal against any cost attributable to the deductible.
- 8.7 The Contractor must promptly pay all premiums, stamp duty, GST and other money entailed in maintaining any insurance required under this Clause 8.

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

- 8.8 The Contractor must give the Principal upon request a copy of the relevant policy document and the insurer's receipt for the last premium paid or a certificate of currency with respect to each of the insurance policies the Contractor is required to maintain under this Clause 8.
- 8.9 The Contractor must inform the Principal in writing of any claim or of the occurrence of any event that may give rise to a claim under any policy of insurance effected pursuant to this Clause 8 within 7 days thereof and must ensure that the Principal is kept fully informed of subsequent actions and developments concerning the event or claim.
- 8.10 This Clause 8 shall survive termination or expiration of the Contract.

9. Defective Services

- 9.1 Where, at any time during the supply of the Services or any part of the Services pursuant to an Order, or after the supply of the Services pursuant to an Order, an Authorised Officer determines, acting reasonably, that the Services or a part of the Services do not comply with the Specification, the Order or the Contract ("Defective Services"), the Principal may give written notice to the Contractor of the lack of compliance, and require the Contractor to promptly supply or supply again the Services or such part of the Services as do not comply.
- 9.2 The Principal may, without derogating from any other right it may have on account of such unsatisfactory or defective supply, defer payment of that part of an invoice as relates to the Defective Services until the Authorised Officer has certified that the resupplied Services comply with the Specification, the Order or the Contract, as the case may be.
- 9.3 If the Contractor fails to comply with a requirement of a notice given under Clause 9.1, the Principal reserves the right to arrange for the supply of the Services from another supplier.
- 9.4 All costs and expenses incurred by the Principal in exercising the rights of the Principal under Clause 9.3 in excess of the Contract Price, shall be a debt due and payable by the Contractor to the Principal.

10. Obligations of Contractor

- 10.1 The Contractor must supply all personnel and equipment necessary for the proper supply or performance of the Services.
- 10.2 The Contractor warrants that it has the necessary skills and expertise to be able to competently supply the Services.
- 10.3 If any Contract Material is produced or reproduced in an electronic format, the Contractor must deliver it to the Principal in a format approved in writing by the Principal.
- 10.4 If any Contract Material is produced or reproduced in an electronic format or stored electronically, the Contractor must not store it on a foreign computer without keeping the current version of the Contract Material on separate media (approved in writing by the Principal) and delivering it to the Principal at intervals approved in writing by the Principal.
- 10.5 The Contractor must not produce, reproduce or store Contract Material in such a way that it is mixed with, attached to or indistinguishable without the use of a computer from, material that is not the subject of the Contract.
- 10.6 For the purposes of this Clause 10, "foreign computer" means a hard disk or other similar device affixed to a computer that is not the property of the Principal.

11. Variation of Services

- 11.1 The Principal may, by written notice given to the Contractor, require the Contractor to vary the Services in nature, scope or timing.

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

- 11.2 Without limiting the generality of Clause 11.1, the Principal may direct the Contractor to:
- increase, decrease or omit any part of the Services; or
 - change the character or content of any part of the Services; or
 - change the direction or dimensions of any part of the Services; or
 - perform additional work.
- 11.3 Where the Principal requires a variation to the Services, the parties must negotiate in good faith a variation of the Contract Price and the time for completion of supply of the Services and failing agreement, either party may invoke the dispute resolution procedure in Clause 19.
- 11.4 The Contractor must not commence work on the variation to the Services unless and until the variation is agreed in writing by the Principal and the Contractor.

12. Invoicing

- 12.1 The Contractor must submit invoices to the Authorised Officer on a monthly basis, unless otherwise specified in the Special Conditions of Contract. The Principal will not have any obligation to pay the Contractor for Services until the Authorised Officer has been given a correctly rendered invoice.
- 12.2 A correctly rendered invoice must:
- identify the Services the subject of the invoice; and
 - specify the title of the Contract; and
 - specify the Contract number allocated to the Contract by the Principal (or any other number as the Principal may specify in writing to the Contractor for the purposes of the Contract)(if any); and
 - where Services are charged on a time basis, be supported by records of time spent by individual persons on the Services, verified by the Authorised Officer; and
 - specify details of the Order; and
 - specify details of the Contract Price requested by the Principal; and
 - provide sufficient detail to enable the Authorised Officer to assess progress against targets (if any) set out in the Order or the Specification; and
 - specify the Australian Business Number of the Contractor; and
 - specify the address for payment of the Contractor; and
 - specify the date of supply of the Services identified in the invoice; and
 - specify the Contractor's invoice number and invoice date; and
 - specify the Contract Price payable by the Principal and particulars of any GST payable in respect of the Contract Price; and
 - otherwise comply with the requirements of a tax invoice for the purposes of the GST Act.

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

- 12.3 Upon receipt of an invoice, the Authorised Officer may require the Contractor to provide additional information to assist the Authorised Officer to determine whether or not an amount is payable.

13. Payment

- 13.1 Subject to the Authorised Officer's certification that:

- a) the Services supplied by the Contractor comply with the relevant Order, the Specification and the Contract; and
- b) the Services supplied by the Contractor are complete; and
- c) the Contractor's invoice is in accordance with the Contract,

the Principal must pay the amount due to the Contractor within 30 days of receipt of an invoice (or such other period as may be mutually agreed in writing between the parties) or, if additional information is required by the Authorised Officer, within 30 days (or such other period as may be mutually agreed in writing between the parties) after receipt of the additional information.

- 13.2 If the Principal pays an invoiced amount to the Contractor, and it is subsequently found not to have been a correctly rendered invoice, the Principal may deduct any overpaid amount owed to the Principal from the next invoiced payment or, if no other payment is due to the Contractor pursuant to the Contract, recover the amount from the Contractor as a debt due and payable to the Principal.
- 13.3 Payment of money to the Contractor does not constitute an admission by the Principal that Services have been supplied in accordance with the Contract.
- 13.4 Failure by the Principal to pay the amount payable by the due time will not be grounds to invalidate or avoid the Contract.
- 13.5 The Contractor shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Contract Price unless otherwise provided in the Contract.
- 13.6 The Principal may deduct from moneys due to the Contractor under the Contract or on any other account, any moneys due from the Contractor to the Principal under the Contract or on any other account, and if those moneys are insufficient, the Principal may have recourse to any security held by the Principal under the Contract. Nothing in this Clause shall affect the right of the Principal to recover from the Contractor any moneys due from the Contractor to the Principal or any balance that remains owing after the deduction of moneys due from the Contractor to the Principal.

14. Temporary Suspension of Services

- 14.1 The Principal may give written notice to the Contractor requiring the Contractor to suspend the progress of the whole or any part of the supply of the Services for a period specified in the notice within a reasonable time after receipt of the notice, if the suspension is required by the Principal because of any change in the nature, scope or timing of the Services.
- 14.2 The Principal may, by giving written notice to the Contractor, require the Contractor to recommence all or any part of the supply of the Services suspended by written notice given under Clause 14.1.
- 14.3 Where the Contractor is required to suspend the supply of the Services pursuant to Clause 14.1:
- a) the Principal and the Contractor must negotiate in good faith as to reasonable compensation payable to the Contractor; and
 - b) any previously agreed date for completion of the supply of the Services will be postponed by a period equal to the duration of the suspension.
- 14.4 The Principal must reimburse the Contractor for any additional reasonable costs incurred by the Contractor which are directly attributable to the suspension of the supply of the Services. If the Principal and the Contractor do not agree on the amount of reasonable compensation within a reasonable period, either party may invoke the dispute resolution procedure in Clause 19.

15. Variation Price

- 15.1 The Contract Price is firm and not subject to rise or fall.

16. Duty

- 16.1 The Contractor must pay all duty imposed under the Duties Act 2001 on the Contract.

17. Goods and Services Tax

- 17.1 Words and phrases defined in the GST Act have the same meaning in this Contract unless the context indicates otherwise.
- 17.2 The Contract Price includes the Principal's liability for GST on the supply of the Services. The Principal is not obliged to pay any additional amount to the Contractor on account of GST on the supply of the Services.
- 17.3 The Contractor must ensure that all invoices rendered to the Principal under the Contract are in a format that identifies any GST paid, and which permits the Principal to claim an input tax credit. However, this Clause 17.3 does not apply if the supply of the Services is not a taxable supply.

18. Termination

- 18.1 If the Contractor:
- a) breaches any Clause of the Contract; or

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

- b) suspends payment of its debts or is unable to pay its debts; or
- c) has execution levied on any of the assets of the Contractor and the execution is not satisfied within 28 days; or
- d) enters into an arrangement, reconstruction or compromise with its creditors or any of them; or
- e) has a receiver appointed for all or any part of the assets of the Contractor; or
- f) has an application made or order filed for the Contractor's administration, voluntary or compulsory liquidation, winding up, dissolution or bankruptcy; or
- g) ceases to carry on business,

the Contractor will be in breach of the Contract and the Principal may give to the Contractor a written notice to remedy the breach.

- 18.2 If within 14 days of receiving a notice under Clause 18.1 the Contractor does not remedy the breach, the Principal may immediately terminate the Contract by giving written notice to the Contractor.
- 18.3 In addition, or as an alternative to termination of the Contract in accordance with Clause 18.2, the Principal may, in circumstances which would otherwise entitle the Principal to terminate the Contract in accordance with Clause 18.2:
- a) let such contracts as the Principal decides are necessary to perform that part of the obligations of the Contractor under the Contract as are yet to be performed or any of them; and
 - b) suspend or cease all payments otherwise due to the Contractor.
- 18.4 This Clause 18 shall survive termination or expiration of the Contract.
- 18.5 Upon termination of the Contract pursuant to Clause 18.2, all money which has been paid and all money to be paid for Services supplied to the date of the termination will be in full and final satisfaction of all claims by the Contractor under the Contract.

19. Dispute Resolution

- 19.1 The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Contract.
- 19.2 If a dispute arises between the parties regarding the Contract, a party may give written notice of the dispute to the other party (a "Dispute Notice"). A Dispute Notice must adequately identify and provide details of the dispute.
- 19.3 A Dispute Notice must be referred to a panel consisting of a representative of the Contractor who is authorised to settle the dispute and the Authorised Officer.
- 19.4 Within 7 days of the giving of the Dispute Notice, the panel must confer at least once to attempt to resolve the dispute or to agree on resolving the dispute by other means.
- 19.5 If the dispute has not been resolved within 28 days of the giving of the Dispute Notice, the dispute must be referred to arbitration.

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

- 19.6 Arbitration shall be effected by an arbitrator who shall be nominated by the Authorised Officer. The arbitration must be conducted in accordance with the provisions of the Commercial Arbitration Act 1990.
- 19.7 Nothing in this Clause shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief in respect of a dispute under this Clause 19 or any matter arising under the Contract.

20. Clauses to Survive Expiration or Termination

- 20.1 The following Clauses survive the expiration or termination of the Contract:
- a) Clause 21 – Intellectual Property Rights; and
 - b) Clause 22 – Release and Indemnity; and
 - c) Clause 24 – Confidentiality; and
 - d) Clause 32 – Right to Information and Disclosure; and
 - e) Clause 33 – Information Privacy.

21. Intellectual Property Rights

- 21.1 The Contractor warrants that the supply of the Services by the Contractor to the Principal and the use of the Contract Material by the Principal under the Contract will not infringe the Intellectual Property Rights of any third party.
- 21.2 The Contractor must indemnify the Principal against any claim by a third party in relation to infringement of the Intellectual Property Rights of the third party of or incidental to the supply of the Services by the Contractor to the Principal under the Contract.
- 21.3 In respect of the supply of the Services by the Contractor under the Contract, the Contractor must at all times indemnify and keep indemnified the Principal from and against any loss or liability (including reasonable legal costs and expenses) incurred by the Principal arising from any claim, demand, suit, action or proceeding (including a claim for a breach of a person's Intellectual Property Rights) by any person against the Principal where the loss or liability arose out of, or in connection with, or in respect of, the supply of the Services by the Contractor under the Contract.
- 21.4 The indemnities in Clause 21.3 will be granted irrespective of whether legal proceedings are instituted and the means, manner or nature of any settlement, compromise or determination. The Principal may recover a payment from the Contractor under this indemnity before it makes the payment in respect of which the indemnity is given.
- 21.5 Unless otherwise specified in the Contract, title to and Intellectual Property Rights in all New Contract Material provided to the Principal, including each and every stage of design and production of it, will upon its creation vest in the Principal.
- 21.6 The Contract does not affect Intellectual Property Rights in Existing Contract Material, but the Contractor grants, and will ensure that relevant third parties grant, to the Principal, a paid up non-exclusive, non-transferable licence:
- a) to use, reproduce, communicate to the public and adapt for its own use; and
 - b) to perform any other act with respect to copyright; and

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

- c) manufacture, sell, hire or otherwise exploit a product or process or to provide a service or to licence a third party to do any of those things in respect of,
the Existing Contract Material but only as part of the Contract Material (and any further development of that material).
- 21.7 Where specified in the Special Conditions of Contract, right and title to the Intellectual Property Rights in the Contract Material so specified will vest in the Contractor and the Contractor grants to the Principal, a non-exclusive, transferable, irrevocable and paid-up licence to use, reproduce, communicate to the public and adapt the Contract Material on the terms and conditions specified in the Special Conditions of Contract.
- 21.8 Where the Contractor is an individual, the Contractor consents to any acts or omissions of the Principal in the exercise of rights or assignments granted under this Clause that might otherwise constitute an infringement of the Moral Rights of the Contractor.
- 21.9 Without limiting Clause 21.8, the Contractor consents, in relation to the Contract Material:
- a) to being attributed as author of works comprised in the Contract Material in a form and manner acceptable to the Principal; and
 - b) to the specific acts or omissions set out in the Contract.
- 21.10 Prior to an individual commencing work in respect of the Contract Material on behalf of the Contractor, the Contractor must obtain from that individual, in writing, and provide to the Principal, upon request:
- a) all consents, permissions and assignments to enable the Principal to exercise in full, without cost to the Principal and without impediment, the rights granted under this Clause 21; and
 - b) without limiting paragraph (a), a consent to any act or omission (including the specific acts or omissions set out in the Contract) which would otherwise infringe the Moral Rights of that individual. If requested by the Principal, such consent must be in a form specified by the Principal.

22. Release and Indemnity

- 22.1 The Contractor will be liable for loss or damage (including personal injury whether or not resulting in death) suffered by the Principal or any officer, servant or agent of the Principal arising from the unlawful or negligent acts or omissions of the Contractor, its employees, subcontractors or agents, in the course of the supply (or attempted or purported supply) of Services under the Contract.
- 22.2 The Contractor releases and indemnifies the Principal and all officers, servants and agents of the Principal from and against all actions whatsoever and howsoever arising which may be brought or made against any of them by any person, including the Contractor, arising from:
- a) any wilful or negligent act or omission of the Contractor or any person for whose conduct the Contractor is liable; and
 - b) any unlawful or negligent act or omission of the visitors, invitees or licensees of the Contractor; and

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

- c) death, injury, loss or damage suffered by the Contractor, its employees, subcontractors or agents, or any of its visitors, invitees or licensees except where the death, injury, loss or damage is caused by the negligence or other wrongful act or omission of the Principal or any officer, servant or agent of the Principal.

22.3 In the event of any claim or action being made or brought against the Principal, the Principal may retain any money due to the Contractor in respect of Services supplied under the Contract for the purpose of settling or defending the claim or action. If the money retained is not sufficient for the purpose of settling or defending the claim or action, the balance outstanding in respect of the claim or action may be recovered from the Contractor as a debt due and payable to the Principal.

23. Conflict of Interest

- 23.1 The Contractor warrants that, to the best of its knowledge, information and belief, at the commencement of the Term, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract. If, during the Term, a conflict of interest or risk of such conflict arises because of work undertaken for any person other than Principal, the Contractor must promptly give written notice to the Authorised Officer of that conflict of interest or risk of it.
- 23.2 The Contractor must take all reasonable measures to ensure that its employees, agents and subcontractors do not, during the Term, engage in any activity or obtain any interest, which is in conflict with providing the Services to the Principal. Any such activity must be disclosed in writing to the Authorised Officer immediately.
- 23.3 Where the Authorised Officer receives a notice of conflict of interest under this Clause, the Principal may give the Contractor a written notice to remedy the conflict under Clause 18.1.

24. Confidentiality

- 24.1 The Contractor must, and must ensure that its employees, agents and approved subcontractors, keep confidential any information obtained in the course of performing the Contract.
- 24.2 If required by the Special Conditions of Contract, the Contractor's employees, agents and approved subcontractors must deliver to the Principal a confidentiality undertaking in the form required by the Principal.
- 24.3 In the event of a breach of a confidentiality undertaking entered into pursuant to Clause 24.2, the Principal may terminate the Contract by giving written notice to the Contractor.
- 24.4 However, the Contractor may disclose any information:
- a) which it is legally required or entitled to disclose; or
 - b) to its legal and accounting advisers for the purposes of obtaining advice in relation to the Contract or any matter arising from the Contract.

25. Assignment

- 25.1 The Contractor must not assign or subcontract any of the rights or obligations of the Contractor under the Contract (either for the supply of the Services or otherwise) without the prior written consent of the Principal. Any consent given by the Principal:
- may be conditional; and
 - will not relieve the Contractor from any of its liabilities or obligations under the Contract.
- 25.2 The Contractor is liable to the Principal for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were the acts or omissions of the Contractor.

26. Negation of Employment Agency Etc.

- 26.1 The Contractor must not represent itself or allow itself to be represented as being an employee or agent of the Principal.
- 26.2 The Contractor will not, by virtue of the Contract, be or become an employee or agent of the Principal.
- 26.3 Nothing in the Contract is to be taken or construed as creating the relationship of a partnership, joint venture or principal and agent, between any of the parties to the Contract.

27. Notices

- 27.1 Notices under the Contract may be delivered by pre-paid postage or certified mail, by hand, by email or by facsimile transmission. Notices are deemed given 5 days after deposit in the mail with postage pre-paid or certified, when delivered by hand, or if sent by facsimile transmission, upon completion as evidenced by a facsimile transmission record. Where a notice is given by facsimile the original document must be posted on the same day as the transmission is sent. The addresses for service of notices are:

a) for the Principal

Physical Address >>

145 Young Street, AYR QLD 4807

Postal Address >>

PO Box 974, AYR QLD 4807

Facsimile >>

(07) 4783 9999

Email >>

Lachlan.Kerr@burdekin.qld.gov.au

- b)** for the Contractor – the address for service, email or facsimile number (if any) of the Contractor specified in the Offer.

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

27.2 A party may change its address for service of notices by giving written notice to every other party to the Contract.

28. Force Majeure

28.1 A party will not be entitled to exercise its rights or remedies upon the default of another party to the Contract (whether at common law or pursuant to the Contract) if that default:

- a) is caused by Force Majeure; or
- b) continues for less than 3 days.

28.2 Without limitation, where the event of Force Majeure continues for a period of more than 14 days, the Principal may terminate the Contract by giving written notice to the Contractor.

29. Authorised Officer

29.1 The Principal must, by giving written notice to the Contractor, appoint a representative (the "Authorised Officer") who shall be responsible for administering the Contract on behalf of the Principal. The Principal may change the identity of the Authorised Officer from time to time. The Principal must give written notice to the Contractor of any change in the identity of the Authorised Officer from time to time. The appointment of an Authorised Officer does not prevent the Principal from exercising any of its rights under the Contract.

29.2 For the avoidance of doubt, the Principal may appoint more than 1 Authorised Officer. If the Principal appoints more than 1 Authorised Officer:

- a) each Authorised Officer must be responsible for administering a specified part of the Contract on behalf of the Principal; and
- b) the Principal may not appoint more than 1 Authorised Officer to administer a specified part of the Contract; and
- c) the Principal must give written notice to the Contractor detailing which part of the Contract is to be administered by each Authorised Officer.

29.3 Not later than 14 days after the Contract Commencement Date the Contractor must appoint a representative who shall be responsible for administering the Contract on behalf of the Contractor by giving written notice to the Principal. The Contractor may change the identity of the Contractor's representative from time to time. The Contractor must give written notice to the Principal of any change in the identity of the Contractor's representative from time to time.

29.4 The Contractor's representative must have a detailed knowledge of all activities associated with the supply and performance of the Services and be authorised by the Contractor to make decisions and act on behalf of the Contractor.

29.5 The Contractor's representative must:

- a) liaise with and report to the Authorised Officer; and
- b) be available for discussions with, and attend briefings when reasonably requested by, the Authorised Officer; and
- c) reply promptly to any correspondence from the Authorised Officer dealing with the Contract; and
- d) if required, provide written reports to the Authorised Officer in a form, to a standard, and containing such information as may be required by, the Authorised Officer.

30. Security and Access

- 30.1 The Contractor must, when using any premises or facilities of the Principal, comply with all reasonable directions and procedures as notified by the Principal or an Authorised Officer, including those relating to security and work health and safety which are in effect at the premises or facility.

31. Industrial Disputes

- 31.1 The Contractor must not involve the Principal in any industrial dispute arising between the Contractor and any employee of the Contractor.

32. Right of Information and Disclosures

- 32.1 The RTI Act provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including Local Governments).
- 32.2 The RTI Act requires that documents be disclosed upon request, unless the documents are exempt, or on balance, disclosure is contrary to the public interest.
- 32.3 Information provided by the Contractor is potentially subject to disclosure to third parties pursuant to the RTI Act.
- 32.4 If disclosure under the RTI Act, or general disclosure of information provided by the Contractor, would be of substantial concern to the Contractor, because it would disclose trade secrets, information of commercial value, the purpose or results of research, or other information of a confidential nature, including Personal Information, this should be indicated by the Contractor. The Principal cannot guarantee that any information provided by the Contractor will be protected from disclosure under the RTI Act.

33. Information Privacy

- 33.1 Where the Contractor or its subcontractors have access to or are responsible for holding Personal Information, the Contractor must:
- a) comply with parts 1 and 3 of chapter 2 of the Information Privacy Act 2009 as if the Contractor were the Principal; and
 - b) ensure that the Personal Information is protected against loss, unauthorised access, use, modification or disclosure, and against other misuse; and
 - c) not use the Personal Information other than for the purpose of the Contract, unless required or authorised by law; and
 - d) not disclose the Personal Information without the written agreement of the Principal, unless required or authorised by law; and
 - e) not transfer the Personal Information outside Australia without the consent of the Principal; and
 - f) ensure that its personnel do not access, use or disclose the Personal Information other than in the performance of their duties; and
 - g) immediately notify the Principal if it becomes aware that a disclosure of Personal Information is, or may be, required or authorised by law; and
 - h) fully cooperate with the Principal, to enable the Principal to respond to applications for

TBSC/18/005 – Green Waste Processing for Burdekin Shire Council

access to, or amendment of, a document containing an individual's Personal Information and to privacy complaints; and

- i) comply with such other privacy and security requirements as the Principal reasonably advises the Contractor from time to time.

33.2 Where the Principal is not reasonably satisfied, on the basis of information provided to it by the Contractor, that proper practices are in place to ensure that the privacy and disclosure of information requirements for Personal Information are being observed and maintained, the Principal may at any time require the Contractor to make its subcontractors aware of its obligations, in accordance with this clause 33 including, when requested by the Principal, requiring any subcontractor to promptly sign a privacy undertaking in a form approved by the Principal.

34. Miscellaneous

34.1 The Contractor must comply with all relevant laws and the requirements of any relevant statutory authority in supplying the Services.

34.2 The Contract is governed by and construed in accordance with the laws of the State of Queensland, and the parties submit to the jurisdiction of the Courts of that State and all Courts competent to hear appeals therefrom.

34.3 No agreement or understanding that varies or amends the Contract will bind any party unless and until agreed to in writing by all parties.

34.4 None of the conditions of the Contract will be waived or deemed waived, except by notice in writing signed by the party waiving the right.

34.5 The Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements either oral or written between the parties with respect to the subject matter referred to in the Contract.

34.6 The parties to the Contract are independent contractors and nothing in the Contract will appoint the Contractor as an agent or employee of the Principal.