CONDITIONS OF TENDER – E-TENDER

**Lump Sum Tenders using AS4305 - 1996 Minor Works Contract Conditions**

1. **INTERPRETATION**
   1. These Conditions of Tender apply to projects tendered through the Department of Housing and Public Works’ E-Tender system.
   2. Meanings assigned to words and expressions in the Conditions of Contract shall apply to those words and expressions used in the Tender Documents and, except where the context otherwise requires, ‘include’ is not a word of limitation.
   3. Unless the contrary intention applies, the following definitions also apply:

**“Alternative Tender”** means any Tender that is not a Conforming Tender;

“**BIF Act**” means the *Building Industry Fairness (Security of Payment) Act 2017* and the regulations made under or in respect of that Act;

**“Conforming Tender”** means a Tender that complies with the requirements of the Tender Documents;

**“Information System”** means a system for generating, sending, receiving, storing or otherwise processing electronic communications;

**“Intellectual Property Rights”** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

“**project bank account**” has the meaning set out in the BIF Act;

**“Tender”** means an offer submitted by a Tenderer;

**“Tenderer”** means a party submitting a Tender and includes a party invited directly or indirectly by the Principal to submit a Tender.

1. **TENDER DOCUMENTS**
   1. “Tender Documents” comprise:
      1. the Tender Form;
      2. these Conditions of Tender;
      3. the Code of Tendering (AS4120 – 1994) as amended by these Conditions of Tender;
      4. the Minor Works Contract Conditions (AS4305-1996) as amended by the Special Conditions of Contract;
      5. the Specification and Drawings (if any);
      6. the Bill of Quantities (if any); and
      7. other documents as are issued and/or referred to by the Principal for the purpose of tendering.
   2. To the extent of any discrepancy or inconsistency between these Conditions of Tender and AS4120-1994, these Conditions of Tender shall prevail.
   3. In the event of any discrepancy or inconsistency between the Special Conditions of Contract and the Minor Works Contract Conditions, the Special Conditions of Contract shall prevail.
   4. An electronic copy of the Tender Documents (excluding AS4120-1994 and AS4305-1996) is available at the electronic location stated in the invitation to tender.
   5. A copy of AS4120-1994 and AS4305-1996 is available for perusal at the office of the Principal.
2. **LODGEMENT OF TENDER**
   1. Subject to clause 3.3, the Tender shall be submitted in electronic format delivered to the electronic tender box indicated on the Tender Form at Item 1.
   2. The electronic Tender shall be deemed to have been delivered to the Department of Housing and Public Works Information System designated to receive the electronic communications at the date and time stated on the electronic receipt issued to the Tenderer. Any Tender, or part thereof, that has not been delivered to the designated Information System before the specified closing time may be rejected at the discretion of the Principal.
   3. In the event of:
      1. a technical failure of the Tenderer’s Information System or of the Department of Housing and Public Works’ Information System, resulting in an inability to submit the Tender in electronic format as required by clause 3.1; or
      2. a failure of the Department of Housing and Public Works’ Information System to issue an electronic receipt to the Tenderer acknowledging receipt of an electronic Tender from the Tenderer in accordance with clause 3.1,

the Principal’s Contact Officer may, on request by the Tenderer, allow the Tender to be submitted in either hardcopy format, in a sealed envelope, delivered to the tender box location advised by the Principal’s Contact Officer, or by email, to the email address advised by the Principal’s Contact Officer.

* 1. If a hardcopy or email Tender is submitted pursuant to clause 3.3, the Tender shall:
     1. include the name of the project and tender number, the closing date and time for receipt of Tenders and the Tenderer’s name and address; and
     2. be lodged in the tender box at the location advised by the Principal’s Contact Officer by being placed therein or, received by email to the advised email address, before the time specified for the closing of Tenders. Hardcopy or email Tenders not in the tender box or email inbox respectively, before the specified closing time may be rejected at the discretion of the Principal.
  2. A Tender received by a means other than that expressly provided for in these Conditions of Tender may not be considered.

1. **TENDER REQUIREMENTS**
   1. Tenders shall include a completed Tender Form plus all other documents required by the Tender Documents.
   2. The Tenderer and all relevant third parties shall do all acts and things required by the Principal for the purposes of giving effect to these Conditions of Tender.
   3. Tenderers shall provide such additional information as may be requested by the Principal.
2. **INFORMATION**
   1. The Principal’s Contact Officer for all enquiries regarding the tender process is the contact officer nominated in the Tender Documents.
   2. The Tenderer shall not communicate with any person or corporation who is the intended owner, occupant, operator or manager of any facility the subject of the Tender except with the express written approval of the Principal.
   3. The Principal will not be liable for any claim on the grounds of erroneous or insufficient information.
   4. The Principal shall not be bound by any oral advice or information given or furnished in respect of the Tender but shall be bound only by written or electronically transferred advice or information furnished by or on behalf of the Principal.
   5. For the purposes of evaluation of Tenders, Tenderers shall provide such additional information as may be requested by the Principal, including financial data.
3. **TENDERER TO INFORM ITSELF**
   1. The Tenderer is deemed to have visited and inspected the site and its surrounds and satisfied itself of conditions and facilities and otherwise acquainted itself with all matters relating to the proposed Contract before submitting its Tender.
4. **TENDERING BY GOVERNMENT AGENCIES**
   1. Notwithstanding clause 6.2.2 of AS4120-1994, the Principal may invite, consider or accept a Tender from one or more government agencies.
5. **COSTS OF TENDERING**
   1. Costs of tendering shall be borne by the Tenderer.
6. **PRINCIPAL NOT BOUND**
   1. Notwithstanding the evaluation of Tenders (if any) in accordance with clause 10, the Principal may in its absolute discretion and at any time accept, or decline to accept, any Tender.
   2. Without derogating from the provisions in clause 9.1, the Principal may, in its absolute discretion, decline to evaluate any Tender that it has determined to be an Alternative Tender.
   3. Notwithstanding that the Principal may have invited Tenders from selected organisations or has otherwise procured submission of Tenders:
      1. the Tenderer acknowledges that the Principal may not, at the time of inviting tenders, have satisfied itself as to the Tenderer’s financial capacity to satisfactorily perform and complete the Contract in accordance with its terms; and
      2. the Principal may decline to consider or accept a Tender from a Tenderer who has not been able to satisfy the Principal that it has sufficient financial capacity to satisfactorily perform and complete the Contract in accordance with its terms.
   4. The Tenderer may be requested to provide financial information to a party nominated by the Principal for the purpose of an assessment by the Principal that the Tenderer has sufficient financial capacity to satisfactorily perform and complete the Contract in accordance with its terms. The Tenderer must provide such information within seven (7) days of request. A failure to provide the requested information within seven (7) days may result in a decision by the Principal that the Tenderer does not have sufficient financial capacity to satisfactorily perform and complete the Contract in accordance with its terms. In the provision of financial information to the party nominated by the Principal, the Tenderer accepts that such information may be provided by the Principal to the Queensland Building and Construction Commission for the purposes of determining the continuing capacity of the licensee to meet any licensing criteria required by the *Queensland Building and Construction Commission Act 1991.*

1. **TENDER EVALUATION**
   1. The Principal shall evaluate Conforming Tenders in accordance with the tender evaluation criteria contained in the Tender Documents or, in the absence of any stated tender evaluation criteria, on the basis of best value for money for Government.
   2. The Principal, if it determines to evaluate an Alternative Tender, shall evaluate such Alternative Tender on the basis of best value for money for Government which may, or may not, be the tender evaluation criteria contained in the Tender Documents.
   3. Where both Conforming and Alternative Tenders have been evaluated, the Principal may accept that Tender which on a view of all circumstances represents the best value for money for Government.
   4. In the event that the Tender contains an ambiguity in relation to the tender sum, then the amount in words at Item 3 of the Tender Form shall prevail.
2. **TENDER EVALUATION PROCESS**
   1. In the evaluation of Tenders (if any) in accordance with clause 10, the Principal may, without being under any obligation to do so, in its absolute discretion and at any time:
      1. seek clarification in respect of any aspect of a Tenderer’s Tender (including to request the Tenderer to provide additional information, documents or evidence in connection with its Tender);
      2. shortlist or prefer any one or more Tenderers; and
      3. discuss or negotiate with, or receive presentations, further submissions or final offers from, any one or more Tenderers in respect of their Tender, in such manner, and as to such aspects of the Tender, as the Principal determines, including price.
   2. The provisions of clause 11.1 and any exercise by the Principal of its rights under clause 11.1:
      1. is without prejudice to any other rights of the Principal;
      2. apply notwithstanding clause 6.6 of AS4120-1994;
      3. except to the extent notified otherwise by the Principal in writing, are subject to the other express provisions of these Conditions of Tender ;
      4. shall not give rise to any representation by the Principal as to the acceptability or otherwise of any Tender;
      5. shall not preclude the Principal from at any time considering or accepting any Tender (whether or not the subject of the exercise by the Principal of its rights under clause 11.1);
      6. shall not give rise to any obligation (implied or otherwise) on the Principal except to the extent expressly provided in these Conditions of Tender or notified by the Principal in writing.
   3. Except to the extent the Principal expressly agrees otherwise, the provisions of these Conditions of Tender shall continue to apply to any process which the Principal may undertake under clause 11.1 in connection with the evaluation of Tenders.
3. **PROJECT FUNDING**
   1. The Principal will not provide particulars of project funding arrangements to Tenderers.
4. **INTELLECTUAL PROPERTY**
   1. Intellectual Property Rights in all material, whether of the Tenderer or a third party, submitted by a Tenderer in its Tender is assigned to the Principal, without any requirement for further documentation or writing, upon acceptance by the Principal of its Tender.
   2. To the extent that any material submitted by a Tenderer is the subject of pre-existing Intellectual Property Rights of third parties, the Tenderer warrants that it is able to procure an assignment of all such Intellectual Property Rights to the Principal and agrees to obtain such assignment upon acceptance of its Tender.
   3. The Tenderer indemnifies the Principal against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of any claim by a third party against the Principal alleging that the material contained in the Tender or acts by the Principal in relation to the Principal’s use of the Tender material infringe any Intellectual Property Rights of that third party.
5. **RIGHT TO INFORMATION AND DISCLOSURE**
   1. The *Right to Information Act 2009* (RTI Act) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies. The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to public interest.
   2. Information contained in a Tender is potentially subject to disclosure to third parties. In the assessment of any disclosure required by the Principal pursuant to the RTI Act, the Tenderer accepts that any information provided in its Tender, including information marked as confidential, will be assessed for disclosure in accordance with the terms of the RTI Act.
   3. Notwithstanding any other provision of the Tender Documents or a Tender, if a Tender is accepted, the Principal may publish on a Queensland Government website or by any other means, Contract information including:
      1. the name and address of the Principal and the successful Tenderer;
      2. a description of the goods and/or services to be provided pursuant to the Contract;
      3. the date of award of Contract (including the relevant stages if the Contract involves more than one stage);
      4. the Contract value (including the value for each stage if the Contract involves more than one stage and advice as to whether any non-price criteria were used in the evaluation of tenders);
      5. the procurement method used; and
      6. for contracts with a value over $10 million, the Contract, or summary information in respect of the Contract, between the Principal and the Contractor.
   4. For open tenders, where the tender sum has a weighting of 100% in the tender evaluation criteria, the Principal may publish the names of all Tenderers and lump sum tender sums tendered.
6. **REGISTRATION AS A PRE-QUALIFIED TENDERER**
   1. The Principal may decline to consider or accept a Tender from a Tenderer who, prior to the award of a Tender, does not hold a Certificate of Prequalification, or is not appropriately registered for the work the subject of the Tender, pursuant to the Prequalification (PQC) System released and current at the time and date at which Tenders were invited.
7. **TENDERER WARRANTIES**
   1. The Tenderer warrants that in submitting its Tender, except as expressly disclosed in its Tender:
      1. it has no knowledge of the tender sum of any other tenderer, nor has it communicated with any other tenderer in relation to the Tenderer’s tender sum, or a price above or below which a tenderer may tender (excluding any pricing advised by the Principal), nor has it entered into any contract, arrangement or understanding with another tenderer to the effect that the Tenderer or another tenderer will tender a non-competitive sum, for the work the subject of the Tender, at time of submission of its Tender;
      2. it has not entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to a trade, industry or other association (above the published standard fee) relating in any way to its Tender or any contract that may be entered into consequent thereon;
      3. it has not paid or allowed any money or entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to or on behalf of any other tenderer, nor received any money or allowance from or on behalf of any other tenderer, relating in any way to its Tender or any contract that may be entered into consequent thereon;
      4. It shall maintain the skill and expertise necessary to complete the work under the Contract for the duration of the Contract;
      5. All persons nominated in the Tender as key personnel will remain working on the project to the extent indicated in the Tender unless the Principal otherwise consents in writing;
      6. It will fulfil all obligations offered in the Tender, including without limitation the Tenderer’s non-price criteria offers.
   2. The Tenderer agrees that the foregoing warranties shall form part of the proposed Contract and a breach of any of the foregoing warranties shall be a substantial breach of Contract under the proposed Contract.
   3. In addition to any other actions the Principal may take, any breach of the warranties given in this clause 16 will result in a review of the Tenderer’s PQC registration status.
8. **PROJECT BANK ACCOUNTS**
   1. In this clause 17, terms defined by the BIF Act as relevant to the operation of Chapter 2 of the BIF Act and used (without separate definition) in this clause, have the meaning given to them by the BIF Act.
   2. Without derogating from the obligations in the BIF Act, the Tenderer must complete the “Returnable Tender Schedule – Project Bank Accounts’ and include it with its Tender if required to do so by the tender documents.
   3. The Tenderer's attention is drawn to:
      1. Chapter 2 (Project bank accounts) of the BIF Act; and
      2. clause 38A of the Special Conditions of Contract.
   4. The Tenderer acknowledges and agrees that if it is the successful Tenderer it will establish and maintain a project bank account if and when it is required to do so under the BIF Act and clause 38A of the Special Conditions of Contract.

***Tenderers must note:***

1. *that:*
   * 1. *if the Tenderer is awarded a Contract, the Principal will, in accordance with the Prequalification (PQC) System, prepare and submit performance reports to the PQC Registrar. The performance reports may include, amongst other things, information regarding;*
        + 1. *achievements or compliance with representations made in response to evaluation criteria listed in Schedule 1 to the Conditions of Tender;*
          2. *compliance with any legislation relating to workplace health and safety, industrial relations, taxation and workers compensation legislation; and*
          3. *compliance with the provisions of the Contract, including those clauses concerning Subcontracting (clause 5), Occupational Health and Safety Audit (clause 6.2); Apprentice/Trainee Policy (clause 35); Payment of Workers and Subcontractors (clause 38); Site Personnel Register (clause 39); and Collusive Arrangements (clause 44);*
        1. *the Queensland Government has published a document entitled “Queensland Code of Practice for the Building and Construction Industry”(the Code of Practice). Tenderers are reminded that by being registered pursuant to the Prequalification (PQC) System they have provided an undertaking that they will abide by the Code of Practice;*

*(c) an adverse performance report or non-compliance with the Code of Practice will result in a review of the Contractor’s PQC registration status,*

1. *where the work under the Contract involves ‘residential construction work’ (as that term is defined in the Queensland Building and Construction Commission Act 1991), payment of the required insurance premium must be made to the Queensland Building and Construction Commission. The cost of complying with that obligation shall be deemed to be included in the Tender.*

**Schedule 1 to Conditions of Tender – Tender Evaluation**

**Principal’s Determination**

The Principal shall determine whether a Tender is an Alternative Tender or Conforming Tender and, in doing so, shall have regard to:

1. whether the Tender contains errors of an administrative nature which do not amend or change the substance of the offer;
2. whether the Tender contains clarification of an ambiguity; and
3. the extent to which the Tender does not contain all of the documents required by the Tender Documents to be submitted.

In making a determination, the Principal’s consideration shall not be limited to the matters nominated at 1, 2 and 3 above.

Where, in addition to the Tender Sum, the Tenderer is required to submit information addressing other tender evaluation criteria and the Tenderer fails to address any of the criteria then the Tender shall be deemed to be an Alternative Tender. Where the Tenderer is required to submit information addressing tender evaluation criteria in addition to the tender sum, the Tenderer must be able to prove and demonstrate ability against each of the criteria.  If, in the opinion of the Principal, in any criteria, the Tenderer fails to demonstrate a satisfactory ability in relation to that criterion, the Principal may decline to further evaluate the Tender.  Without limiting the foregoing, if the criteria has points allocated to it and the Tenderer receives a point score less than 50% of the highest possible point score for a given criterion, the Principal in its absolute discretion may decline to further evaluate the Tender.

Any Tender that contains qualifications shall be deemed to be an Alternative Tender.

In the event that the Tender contains an ambiguity in relation to the Tender Sum, then the amount in words at Item 3 of the Tender Form shall prevail.

**Tender Evaluation Criteria – Conforming Tenders**

***Where the weighting applied to the Tender Sum is equal to 100% Tenderers are not required to provide information in relation to any other criteria.***

***Guide Note: Non-price criteria are suggested to be included where the contractor is to have design responsibility under the contract. The text for criteria 2 & 3 is example only – criteria and weightings to be completed by project manager as applicable for the project. Delete this Guide Note***

**Criterion 1. Tender Sum Weighting 100%**

**Criterion 2 Project Specific Objectives Weighting %**

**Project Specific** issues relevant to this Tender are;

1. Methodology; and
2. Resource Strategy including key personnel; and
3. Use of local subcontractors and suppliers in accordance with the Queensland Procurement Policy.

***GUIDE NOTE***

***When non-price criteria have been approved to form part of the tender evaluation process, the responsible Project Officer should complete this section in accordance with the relevant project specific issues. The format and relevant project specific issues may be as follows:***

***In submitting a Tender, Tenderers are expected to address the extent to which the Tender;***

* ***Recognises the need for existing functions to remain operational;***
* ***Provides for effective communication strategies between all interested parties;***
* ***Provides a strategy for management of security which ensures the safety of workers, staff and the general public;***
* ***Provides a strategy for community consultation and awareness; and***
* ***Provides for project specific, and backup, key team members.***

***Additional Project Specific issues expected to be addressed include;***

* ***A curriculum vitae for each person nominated;***
* ***The name of a referee for each person nominated. The Principal reserves the right to contact additional referees not nominated in the Tender and to include the results of such contact in the tender evaluation;***
* ***Project personnel organization chart, including allocated tasks;***
* ***Demonstrate how opportunities for local suppliers are optimised and the local benefits test applied.***

***Note: The above Guide Note is to be deleted and replaced with project specific version.***