# Conditions of Tender

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| Project name |  |
|  |
| Project number |  |

## CONDITIONS OF TENDER

1. The tender documents comprise the tender form, letter of invitation to tender (if any), these Conditions of Tender, the Australian Standard® Code of Tendering (AS4120-1994) as amended by these Conditions of Tender, the Conditions of Contract for Medium Works with Design and such specifications, drawings and any other information issued by the Principal for the purposes of tendering and which may be inspected or obtained at the place of closing of tenders. AS4120-1994 is available for purchase at the SAI Global Web Shop, <https://www.saiglobal.com/> or the Standards Australia Webstore, <http://www.standards.org.au>.
2. For hardcopy tenders (if applicable):
	* 1. the tender shall be signed, fully priced where required and accompanied by any other documents required to be submitted; and
		2. the tender must be enclosed in an envelope, sealed and endorsed with the location and description of the work and reference number (if any) and lodged at the place named in the tender form (tender box), by the date and time given. Any tender, or part thereof, not in the tender box before the specified closing time may be rejected at the discretion of the Principal.

In exercising its discretion as to rejection of any tender, the Principal shall, amongst other factors, consider any evidence that the tender was sent by prepaid post or recognised carrier in time to be delivered, within the time stated, in the ordinary course of mail or delivery by the recognised carrier.

1. For electronic tenders (if applicable):
	* 1. the tender shall include a completed tender form, be fully priced where required and accompanied by any other documents required to be submitted;
		2. the tender must be lodged electronically at the place named in the tender form for electronic tenders by the date and time given; and
		3. an 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 electronic 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.
2. A tender received by a means other than expressly provided for in these Conditions of Tender may not be considered.
3. The Tenderer is required to satisfy itself as to the correctness and sufficiency of its tender. A tender shall be deemed to be on the basis that the Tenderer has a full knowledge of all matters relating to the Contract and has undertaken an inspection of the site and any existing structures or features thereon.
4. The Principal shall not be bound by any oral advice or information furnished in respect of the tender but shall be bound only by written advice or information given or furnished by it (which may be given electronically).
5. The Principal shall evaluate tenders that comply with the requirements of the tender documents (‘conforming tenders’) in accordance with the tender evaluation criteria contained in Schedule 1 to the Conditions of Tender or, in the absence of Schedule 1, on the basis of best “value for money” in accordance with the Queensland Procurement Policy. The Principal, if it determines to evaluate an alternative tender (being a tender that is not a conforming tender), shall evaluate such tenders on the basis of best “value for money” in accordance with the Queensland Procurement Policy which may, or may not be the tender evaluation criteria contained in Schedule 1. Where both conforming and alternative tenders have been evaluated, the Principal may accept a tender which on a consideration of all the circumstances appears to be the best “value for money” for the Queensland Government.
6. Notwithstanding the evaluation of tenders (if any) in accordance with clause 7, the Principal shall not be bound to accept the lowest or any tender. The Principal may accept a tender which on a consideration of all the circumstances appears to be the best “value for money” in accordance with the Queensland Procurement Policy. The Principal may consider, accept or decline to accept any tender. A tender shall not be deemed to have been accepted until the date of notification in writing to the Tenderer of such acceptance.
7. Without derogating from clause 7 and notwithstanding clause 6.6 of AS4120-1994, in considering or accepting any tender, the Principal may, without being under any obligation to do so, in its absolute discretion and at any time, seek clarification in respect of any aspect of a tender, shortlist or prefer any one or more tenderers, and discuss or negotiate with or receive final offers from any one or more tenderers, in such a manner and as to such aspects of the tender, as the Principal determines.
8. The Tenderer shall have in place the quality system nominated by the Principal in the contract (if any).
9. Notwithstanding that the Principal may have invited tenders from selected organisations or has otherwise procured submission of tenders, the Tenderer acknowledges that 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. 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 as to the Tenderer’s financial capacity and a failure to provide the requested information, within seven (7) days of such request, 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.
10. If the Tender Sum is greater than $1,000,000 (incl. GST), 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.
11. If required by the tender documents, the Tenderer acknowledges and agrees that if awarded a Contract as a result of submitting a tender, it shall comply with the requirements of the Working with Building and Asset Services document and, prior to commencing the Works, be registered as a Building and Asset Services’ Registered Contractor.
12. The *Right to Information Act 2009* (Qld) (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.
13. 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.
14. 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); and
		5. the procurement method used.
15. For open tenders, the Principal may publish the names of all Tenderers and the lump sum Tender Sums tendered.
16. The law governing the tender documents and any subsequent contract, if applicable, is the law of Queensland and the parties submit to the non-exclusive jurisdiction of the Courts of Queensland.
17. All information contained in the Tender Documents which is not in the public domain is to be treated as confidential (“Confidential Information”). Confidential Information contained in the Tender Documents is only to be used for the purpose of preparing a Tender in response to the Invitation to Tender and the Tender Documents.
18. A party issued with Tender Documents:
	1. must ensure that only appropriate employees have access to the Confidential Information. In all such cases, the party is to inform such employees of the confidential nature of the information and that it must not be disclosed.
	2. must not and must ensure that its employees and agents do not at any time disclose such Confidential Information directly or indirectly to any person whatsoever for any reason, or use or permit it to be used directly or indirectly for any reason.
	3. fully indemnifies the Principal against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of disclosure or unauthorised use of Confidential Information by the party, its employees and agents.
19. Information relating to the Tenderer relevant to the evaluation criteria that may be held by any Government Department or Instrumentality, such as Work Health Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission and the Australian Building and Construction Commission, may be obtained by or made available to the Principal for its information and verification, and may be taken into account in assessing the Tender Response.
20. The Tenderer must comply with the Ethical Supplier Threshold and the Tenderer must complete the Ethical Supplier Threshold questionnaire on the Tender Form. Any response indicating non-compliance with the Ethical Supplier Threshold criteria will result in the Tender not being considered as a conforming Tender.

***[DELETE*** ***SCHEDULE 1 IF NOT APPLICABLE]***

**SCHEDULE 1 – 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 “Tender Sum” inclusive of GST amount in words stated in the Tender Form shall prevail.

***Tender Evaluation Criteria – Conforming Tenders***

Where the Price Criterion – Tender Sum is the only criterion given a weighting or allocated points, Tenderers are not required to provide information in relation to any other criteria.

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| ***GUIDE NOTE [Delete before publishing]***1. ***The Project Manager must determine whether the tender is to be evaluated using the PQM or the Weighting method. Delete the tender evaluation method format not being used.***
2. ***The Project Manager must complete the Non-Price Criteria as applicable for the project. The Criterion 2 – Non-Price Criteria listed below in both methods are EXAMPLE ONLY.***
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***Tender Evaluation Criteria – Weighting Method***

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| ***GUIDE NOTE [Delete before publishing]**** ***Use the below format for the Weighting Method and delete the PQM format option.***
* ***Allocate a percentage weighting to Criterion 1 – Price and Criterion 2 – Non-Price Criteria. Then allocate an appropriate weight to each of the criteria under Criterion 2, with the sum of the individual criterion equalling the total percentage allocated to Criterion 2.***
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*Criterion 1 Price Criterion - Tender Sum Weighting ……… %*

*Criterion 2 Non-Price Criteria Weighting (total)……… %*

1. 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.

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| ***GUIDE NOTE – Non-Price Criteria******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. For example:******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.***
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The Tenderer must objectively and numerically identify the extent to which the Tender addresses the above criteria (other than the Tender Sum) and otherwise substantiate the Tender in respect of the criteria in a submission containing not more than 5000 words. Responses to the above criteria (other than the Price Criterion) shall be bound separately to the Tender Form and shall not include the Tender Sum.

***Tender Evaluation Criteria – PQM Method***

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| ***GUIDE NOTE [Delete before publishing]**** ***Use the below format for PQM tender evaluation and delete the Weighting Method format option.***
* ***Allocate points to each of the criteria listed under Criterion 2 – Non-Price Criteria. Criterion 1 – Price Criterion is not allocated points.***
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*Criterion 1 Price Criterion - Tender Sum*

*Criterion 2 Non-Price Criteria Points (total) ………*

* [insert]
1. Project Specific Objectives Points ………

Project Specific issues relevant to this Tender are;

1. Methodology;
2. Resource Strategy including Key Personnel; and
3. Use of Local Subcontractors and Suppliers in accordance with the Queensland Procurement Policy.

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* ***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***
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* ***Demonstrate how opportunities for local suppliers are maximised and the local benefits test applied***
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The Tenderer must objectively and numerically identify the extent to which the Tender addresses the above criteria (other than the Tender Sum) and otherwise substantiate the Tender in respect of the criteria in a submission containing not more than 5000 words. Responses to the above criteria (other than the Price Criterion) shall be bound separately to the Tender Form and shall not include the Tender Sum.

***Quality Premium Adjustment of Tender Sums, if the Price Quality Premium method of Tender Evaluation is used by the Principal***

For the purposes of tender evaluation only, the Tender Sum of each tender will be adjusted by application of a quality premium calculated as follows:

* Weighted Score for each non price criterion = Tenderer’s criterion score (0-5)/5 (or such other applicable scoring range) x weighting (0-10) (or such other weighting)
* Weighted Sum = sum of all non price criterion Weighted Scores
* Weighted Sum Margin = Tenderer’s Weighted Sum – the Weighted Sum of the Tenderer with the lowest Weighted Sum
* Quality Premium for each tender = pre-tender estimate x Weighted Sum Margin / (100-weighting)

For the purposes of the tender evaluation only, the Quality Premium thus established for each tender will be subtracted from the tendered sum of that tender and the tenders compared accordingly.

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| Schedule [INSERT IN PRELIMINARIES / DELETE FROM CONDITIONS OF TENDER]DELETE THIS GUIDE NOTEThis schedule is to form part of the preliminaries section of the tender documents for ‘design and construct’ projects. Project Managers to complete as appropriate – the following is a guide only.This schedule should not be included for “construct only” projectsThe Project Manager must be mindful of the costs of tendering and ensure abortive design work by unsuccessful Tenderers is kept to a minimum.Example Tender requirements for design and construct Tenderers:Tenderers are required to submit as part of the tender the following:A development proposal based on the tender documents. The development proposal is required to contain:1. a statement of the names of consultants which the Tenderer proposes to engage and the extent of services envisaged;
2. a time program indicating all activities occurring during the time required for the execution of the work under the Contract, including design development, documentation, construction and commissioning activities;
3. the projected cash flow;
4. an architectural sketch plan of the proposed site development and surrounding infrastructure to a minimum scale of 1:500;
5. architectural sketch plans, elevations and typical sections of the building(s) to a minimum scale of 1:200;
6. civil/structural schematic drawings to a minimum scale of 1:200;
7. schematic drawings for mechanical, electrical, fire and other services to a minimum scale of 1:200;
8. schedules of finishes; and
9. schedules of fixtures, fittings and equipment including quantities, brand names, model numbers and costs.
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