

Standing Offer Arrangement

CONDITIONS OF OFFER

**For the provision of
Goods and/or Services**

Version 002- dated 1 July 2009



Introduction

In 2007 and 2008 the Department of Public Works undertook a major review of all the procurement terms and conditions to incorporate any new legal and legislative requirements on specific issues. This review also aimed to ensure that the conditions adequately address specific and emerging procurement practices and trends. Industry is very supportive of a single set of terms and conditions across Government as this reduces the costs of the tendering and contractual processes.

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Further information may be obtained from Queensland Government Chief Procurement Office website on www.qgcpo.qld.gov.au

Table of Contents

STANDING OFFER ARRANGEMENT - CONDITIONS OF OFFER

1. Definitions and Interpretation;
2. Compliance with the Invitation;
3. Offer Validity Period;
4. Format of Offer;
5. Essential Information;
6. Language;
7. Offerors Responsibilities;
8. Lodgement of Offer;
9. Non-Conforming Offers;
10. Alternative Brands;
11. Alternative Goods and/or Services;
12. Confidential Information;
13. Previous Discussions/Undertakings;
14. Compliance with Laws and Other Requirements;
15. Insurances;
16. Prices Offered;
17. Competitive Neutrality;
18. Delivery Period;
19. Opening of Offers;
20. Invitation to Offer Process;
21. Evaluation of Offers;
22. Post-Offer Negotiations or other Form of Communication;
23. Commissions, Incentives, Collusion and Conflict Of Interest;
24. Standing Offer Arrangement;
25. Utilisation of Standing Offer Arrangement by other Entities;
26. Existing Arrangements with Queensland Government or other Entities;
27. Acceptance and/or Rejection;
28. Successful Offeror;
29. Advice to Unsuccessful Offeror;
30. Decision and Debriefing;
31. No Advertisement;
32. Governing Law;
33. Right to Information.

STANDING OFFER ARRANGEMENT - CONDITIONS OF OFFER

1. Definitions and Interpretation

1.1 Definitions

In these Standing Offer Arrangement - Conditions of Offer, unless the context otherwise requires, the following definitions will apply:

“Additional Provisions” means the departures from the Specifications and/or Standing Offer Arrangement Conditions which have been agreed between the Principal and Successful Offeror and included in Schedule 3 to the Standing Offer Arrangement Conditions;

“Arrangement Term” means the term of the Arrangement as specified in Response Form 6.4 – item 7 of Schedule 1;

“Business Day” means between 9.00am and 5.00pm on a day other than a Saturday, Sunday or public holiday at the Eligible Customer’s address;

“Closing Date” means the time and date specified in item 2 of Part 1 of the Invitation, by which Offers must be submitted by the Offeror and received by the Principal;

“Conditions of Contract” means the terms and conditions of a Contract as specified in Section B of the Standing Offer Arrangement Conditions Version 002 – dated 1 July 2009, which can be located from the Queensland Government Chief Procurement Office website: www.ggcpo.qld.gov.au - under ‘Standard contract forms’, and any additional conditions of contract, as specified in Part 5 of the Invitation;

“Confidential Information” means, in relation to the Principal and/or an Eligible Customer (the **Discloser**), information that is not trivial and:

(a) is by its nature confidential;

(b) is communicated by the Discloser to the Offeror or any potential Offeror (including an entity which obtains the information in the Invitation but does not submit an Offer) (the **Recipient**) as confidential;

(c) the Recipient knows or ought to know is confidential; and/or

(d) all information obtained by the Recipient in the course of submitting an Offer as specified in item 5 of Part 1 of the Invitation.

Subject to (a), (b), (c) and (d) above, Confidential Information includes information which is:

(i) comprised in or relating to any Intellectual Property Rights of the Discloser;

(ii) relating to the internal management and structure of the Discloser, or the personnel, policies and strategies of the Discloser;

(iii) of any actual or potential commercial value to the Principal or to the person or corporation which supplied that information;

(iv) information relating to the policies, strategies, practices and procedures of the Commonwealth, State or Territory Government and any information in the Recipient’s possession relating to the Commonwealth, State or Territory Government public services; or

(v) in the Recipient’s possession relating to the Discloser’s clients or suppliers, and like information,

but does not include information which:

(vi) was already lawfully disclosed by the Recipient prior to the Recipient being required to treat the information as confidential;

(vii) is lawfully received from a third party which is not bound by a duty of confidentiality;

(viii) has become public knowledge (other than through a breach of an obligation of confidence under these Conditions of Offer);

(ix) was independently developed or released by the Recipient without reference to the Confidential Information;

(x) the Recipient is required by law to disclose; or

(xi) the Recipient is required by these Conditions of Offer to disclose to a third party;

“Conflict of Interest” means having an interest (whether personal, financial or otherwise) which conflicts or may reasonably be perceived as conflicting with the ability of the Offeror to submit an Offer fairly and objectively;

“Contact Officer” means the person nominated by the Principal as specified in item 4 of Part 1 of the Invitation, to be the sole point of contact for this Invitation Process, or other person nominated from time to time by the Principal as the Contact Officer;

“Contract” means a legally binding contract as agreed between the Eligible Customer and the Successful Offeror on the terms and conditions of the documentation specified in clause 1.2.7, for the provision of the Goods and/or Services;

“Deed of Agreement” or “Deed” means the deed entered into between the Principal and Successful Offeror under which the Standing Offer Arrangement is established, on the terms and conditions of the Standing Offer Arrangement Conditions;

“Deliverable” means the Goods and/or Services to be supplied to the Eligible Customer by the Successful Offeror in accordance with the Arrangement and a Contract;

“Delivery Period” means the period in which the Goods and/or Services will be supplied and/or performed as specified in Response Form 6.4 – item 11 of Schedule 1 of the Invitation, by the Successful Offeror to an Eligible Customer;

“Document” includes:

- (a) any paper or other material on which there is writing;
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and/or
- (c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device, and includes electronic documents;

“Eligible Customer” means the State of Queensland or other entity specified in item 3 of Part 1 of the Invitation, who may seek to procure the Goods and/or Services;

“Evaluation Process and Criteria” means the evaluation process and criteria for Offers as specified in Part 4 of the Invitation;

“Goods” means the material, plant, item or equipment as specified in the Specifications (if applicable);

“GST” means a goods and services tax imposed by or through the GST Legislation;

“GST Amount” means the amount of GST payable in respect of any taxable supply under the Contract, calculated at the rate of GST applicable at the time;

“GST Legislation” means *A New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition Act (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate, recapture or recoup the tax imposed by any of such Acts;

“Intellectual Property Rights” includes all copyright, trade mark, design, patents or other proprietary rights, or any rights to registration of such rights existing in Australia, or elsewhere or as protected by legislation from time to time, but excludes Moral Rights;

“Invitation to Offer” or **“Invitation”** means the documentation issued by the Principal, as specified in clause 1.2.4, inviting Offers for the provision of the Goods and/or Services;

“Invitation to Offer Details” means the details contained within Part 1 of the Invitation;

“Invitation Process” means the process of inviting Offers for the provision of the Goods and/or Services, the Offeror’s preparation and submission of Offer, communication between the Parties in relation to the Invitation and/or Offer, evaluation of Offers and the subsequent acceptance or rejection of Offers;

“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 (Cth)*, and rights of a similar nature anywhere in the world;

“Non-Government Organisation” means a body (including a private school, but excluding an Eligible Customer) which is:

- (a) directly or indirectly, partially or entirely funded by the Commonwealth, State or Territory;
- (b) community based, non-profit making organisation performing community services; and/or
- (c) another entity,

approved by the Principal to procure Goods and/or Services through the Arrangement;

“Offer” means an offer submitted by an Offeror in response to the Invitation, including subsequent modifications;

“Offeror” means the entity specified in the Response Form 6.1 who submits an Offer and in the case of a joint Offer includes each Offeror;

“Order” means the document used to authorise and record the purchase of the Goods and/or Services by the Eligible Customer to the Successful Offeror, which if issued forms part of the Contract;

“Parties” means Principal and Offeror;

“Price” means the itemised price and/or the price calculated by reference to a schedule of rates payable by an Eligible Customer for a Deliverable, as specified in Response Form 6.2, and unless otherwise specified in Response Form 6.2 is inclusive of packaging, handling, freight, GST and all other duties, taxes and charges;

“Principal” means the State of Queensland or other entity specified in item 1 of Part 1 of the Invitation, seeking offers for the provision of Goods and/or Services, on its own behalf and/or on behalf of any Eligible Customer;

“Queensland Government Body” means

- (a) a body corporate or an unincorporated body established or constituted for a public purpose by State of Queensland legislation, or an instrument made under that legislation (including a local authority);
- (b) a body established by the State of Queensland through the Governor or a Minister; or
- (c) an incorporated company over which the State of Queensland exercises control.

“Response Forms” means the forms contained within the Invitation which the Offeror must complete and submit as part of its Offer, which sets out certain required information and identifies the Offeror’s departures from the Invitation;

“Schedules” means the schedules which are part of the Standing Offer Arrangement and/or Contract;

“Services” means the services as specified in the Specifications (if applicable);

“Specification” means the detailed description of the Principal's requirements which are contained within the Invitation, specifying the nature of the Goods and/or Services for which Offers are sought;

“Standing Offer Arrangement” or “Arrangement” means an arrangement established between the Principal and the Successful Offeror (including without limitation a standing offer arrangement, a register of pre-qualified suppliers, panel arrangement or preferred supplier arrangement) by which Contracts may be established as and when required by an Eligible Customer;

“Standing Offer Arrangement Conditions” means the terms and conditions of the Standing Offer Arrangement as specified in Section A and B of the Standing Offer Arrangement Conditions Version 002 – dated 1 July 2009 which can be located from the Queensland Government Chief Procurement Office website: www.qgcpo.qld.gov.au - under ‘Standard contract forms’ and any additional standing offer arrangement conditions, as specified in Part 5 of the Invitation;

“Standing Offer Arrangement - Conditions of Offer” means these terms and conditions and any additional terms and conditions as specified in Parts 1 and 2 of the Invitation, which regulate the pre-contractual relationship between the Parties;

“Successful Offeror” means the entity to be specified in Response Form 6.4 – item 3 of Schedule 1 of the Invitation, from whom the Goods and/or Services may be procured.

1.2 Interpretation

1.2.1 In these Standing Offer Arrangement - Conditions of Offer the index and clause headings have been inserted for ease of reference only and are not intended to affect the meaning or interpretation of these Standing Offer Arrangement – Conditions of Offer.

1.2.2 The following rules shall apply in interpreting these Standing Offer Arrangement - Conditions of Offer, except where the context makes it clear that a rule is not intended to apply:

- (a) words importing a gender include the other gender;
- (b) words in the singular include the plural and vice versa;
- (c) all dollar amounts refer to Australian currency;
- (d) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (e) a reference to an entity or person includes an individual, corporation, partnership or other legal entity;
- (f) a party includes its executors, administrators, liquidators, successors and permitted assigns;
- (g) “consent” means prior written consent;
- (h) “in writing” means either by letter, email or facsimile;
- (i) a reference to a clause, Response Form, Schedule, attachment or annexure is a reference to a clause, Response Form, Schedule, attachment or annexure to these Standing Offer Arrangement - Conditions of Offer;
- (j) if a day on which an act is to be done is a Saturday, Sunday or public holiday in the place where the act is to be done, the act may be done on the next Business Day in that place, unless the Parties agree otherwise;
- (k) if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;
- (l) a clause is a reference to all of its sub-clauses; and
- (m) a document or agreement or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated.

1.2.3 If the Offeror comprises two or more persons then their Offer will bind them jointly and each of them severally.

1.2.4 The Invitation comprises the following documents:

- (a) Invitation to Offer Details;
- (b) Standing Offer Arrangement - Conditions of Offer;
- (c) Specifications;
- (d) Evaluation Process and Criteria;
- (e) Standing Offer Arrangement Conditions; and
- (f) Response Forms.

1.2.5 The following documents will constitute the entire Arrangement between the Principal and the Successful Offeror:

- (a) Deed of Agreement incorporating the terms and conditions of the Standing Offer Arrangement Conditions including Schedules 1, 2 and 3 as completed by the Principal, which are attached to the Deed of Agreement;
- (b) Specifications;
- (c) Successful Offeror's Offer; and
- (d) any other documentation forming part of the Arrangement, as agreed in writing between the Principal and Successful Offeror.

- 1.2.6 In the event of any conflict between the documents specified in clause 1.2.5, the order of precedence to resolve the conflict will be in the above order. In the event of any inconsistency between the Deed of Agreement and Schedules 1, 2 and 3, the Deed of Agreement will prevail to the extent of the inconsistency.
- 1.2.7 The following documents will constitute the entire Contract between an Eligible Customer and the Successful Offeror:
- (a) Standing Offer Arrangement Conditions (Section A), including Schedules 1, 2 and 3;
 - (b) Standing Offer Arrangement Conditions (Section B), including Schedule A – Contract Details and/or other form of document (e.g. Order) from the Customer by which a binding contract is formed between an Eligible Customer and the Successful Offeror;
 - (c) applicable Contract Schedule(s), as relevant to the supply of the Deliverable; and
 - (d) any Document, in whole or in part, which Schedule A – Contract Details expressly incorporates as part of a Contract.
- 1.2.8 In the event of any conflict between the documents specified in clause 1.2.7, the order of precedence to resolve the conflict will be in the above order.

2. COMPLIANCE WITH THE INVITATION

- 2.1 Each Offeror must ensure that its Offer complies with the terms and conditions contained within the Invitation.
- 2.2 Each Offeror must respond to every requirement/question in the Response Forms and submit these as part of their Offer.
- 2.3 The Offeror must specify in Response Forms 6.3 any proposed Additional Provisions which will form part of its Offer.
- 2.4 Any proposed Additional Provisions which are not specified in Response Form 6.3 will not form part of the Offer and will not be considered by the Principal.
- 2.5 Despite clauses 2.3 and 2.4, any proposed Additional Provisions which takes away or reduces the entitlements that would otherwise be provided to the Principal under clause 33.5 will not be considered by the Principal.

3. OFFER VALIDITY PERIOD

- 3.1 Offers must remain valid and open:
- (a) for the minimum period as specified in item 6 of Part 1 of the Invitation after the Closing Date, unless otherwise agreed in writing between the Principal and the Offeror; or
 - (b) until the Principal advises the Offeror in writing that it has been unsuccessful,
- whichever occurs first.

4. FORMAT OF OFFER

- 4.1 Each Offeror must ensure that:
- (a) it completes the Response Forms;
 - (b) its Offer bears the name of the Offeror on each page; and
 - (c) its Offer is executed in a manner so as to bind the Offeror (or, in the case of joint offers, each Offeror).
- 4.2 Where the Offeror is required to submit its Offer in a 'hard copy' format, the Offeror must ensure that:
- (a) the original Offer is signed and marked 'Original';
 - (b) all copies of the Offer are each marked 'Copy Only';
 - (c) all copies submitted are true copies of the original Offer in all respects. In the event that there is any discrepancy between an original and a copy Offer, the 'Original' will be deemed to be the operative document; and
 - (d) any alteration in the Offer is initialled by the Offeror.

5. ESSENTIAL INFORMATION

- 5.1 Every Offeror must include in its Offer the following information in Response Form 6.1:
- (a) in the case of an Offer by:
 - (i) an individual - the Offeror's full name (including given names and surname) and address;
 - (ii) an individual or individuals as trustee/s – the full name of the individual/s (including given names and surname) and the address of each trustee of the trust;
 - (iii) any registered Business Name (BN) (if applicable);
 - (b) in the case of an Offer by a company:
 - (i) the full name of the company;
 - (ii) the address of the registered office of the company;
 - (iii) the Australian Company Number (ACN);
 - (iv) any registered Business Name (BN) (if applicable);

- (v) the name and company title of the person signing the Offer on behalf of the company; and
 - (vi) whether or not the company is a trustee;
- (c) in the case of an Offer by a public sector agency -
- (i) the full name and address of the agency; and
 - (ii) the name and title of the person signing the Offer on behalf of the agency;
- (d) where an Offeror trades under a business name:
- (i) the full business name;
 - (ii) address of every proprietor trading under that business name; and
 - (iii) the address of the principal place of business;
- (e) in the case of joint Offers (including partnerships), the information detailed in paragraphs (a) to (d) for each Offeror;
- (f) if the Offeror proposes to sub-contract the provision of any part of the Goods and/or Services – the information detailed in paragraphs (a) to (e) for each sub-contractor together with full details of the sub-contractor's relevant experience or expertise; and
- (g) subject to clause 5.2, the active Australian Business Number (ABN) of the Offeror/s (if applicable).
- 5.2 It is not a requirement under these Standing Offer Arrangement - Conditions of Offer that Offerors possess an active Australian Business Number (ABN) at the time of submitting an Offer. However, Offerors that do not quote an ABN when submitting an Offer will be required to:
- (a) submit a '*Statement by a supplier – Reason for not quoting an Australian Business Number (ABN) to an enterprise*' form to the Principal with their Offer; or
 - (b) provide evidence of their ABN before any Arrangement can be entered into with the Principal.
- 5.3 Offerors should seek advice from the Australian Taxation Office (www.ato.gov.au) as to their eligibility to sign the '*Statement by a supplier – Reason for not quoting an Australian Business Number (ABN) to an enterprise*' form.

6. LANGUAGE

- 6.1 Each Offer must be written in the English language.

7. OFFERORS RESPONSIBILITIES

- 7.1. It is the responsibility of each Offeror to:
- (a) read and familiarise itself with the contents of the Invitation;
 - (b) satisfy itself as to local conditions and facilities that may impact on the Offeror's ability to Offer or to supply the Goods and/or Services or comply with other specified requirements;
 - (c) carry out its own investigation as to the feasibility of its Offer and to rely on that investigation; and
 - (d) pay its own costs of investigating, preparing and lodging an Offer.
- 7.2 Any party expending money, making commitments or incurring liabilities on the basis of responding to the Invitation or in relation to any matter contained in the Invitation, does so at its own risk and expense.
- 7.3 If an Offeror requires information or clarification of any part of the Invitation and/or the Invitation Process:
- (a) the Offeror must direct its enquiries to the Contact Officer nominated in item 4 of Part 1 of the Invitation;
 - (b) the Offeror may only rely on the advice, information or clarification provided in writing by the Principal;
 - (c) if, after seeking clarification from the Contact Officer, the Offeror still has any doubt as to the meaning of any part of the Invitation, the Offeror must include in its Offer a statement identifying the uncertainty and stipulate the interpretation upon which the Offer is based; and
 - (d) the Principal will not respond to any request for information or clarification from the date specified in item 13 of Part 1 of the Invitation. If no date is specified in item 13 of Part 1 of the Invitation, then this date will default to the Closing Date.
- 7.4 An Offeror cannot claim from the Principal any losses, damages or expenses, or an extension of time to make an Offer on the grounds that insufficient or ambiguous information was given in the Invitation.
- 7.5 The Principal reserves the right to change the Specifications or any part of the Invitation prior to the Closing Date. If the Invitation has been obtained via the Queensland Government Marketplace e-Tender website, it is the responsibility of each Offeror to regularly check this website for any changes to the Invitation prior to the Closing Date. The Principal accepts no responsibility for Offerors not being aware of any changes to the Invitation.

8. LODGEMENT OF OFFER

- 8.1 If specified in item 7 of Part 1 of the Invitation that an Offer must be submitted in a 'hard copy' format, every Offer must be:
- (a) sealed in an appropriate package;

- (b) submitted in the format and number of copies specified;
 - (c) endorsed on the front of the sealed package; and
 - (d) directed to the Principal at the specified address.
- 8.2 If specified in item 8 of Part 1 of the Invitation that an Offer must be submitted electronically via the Queensland Government Marketplace e-Tender website, the Offeror:
- (a) must ensure that the Offer is lodged using the user identification details and unique password for the Invitation, received to download the original Invitation document;
 - (b) must ensure that the Offer is submitted in the format specified in item 8 of Part 1 of the Invitation;
 - (c) may submit multiple attachments to the Offer/s to this website;
 - (d) must keep the file size of each document below 10Mb (10,000KB); and
 - (e) must ensure prior to submitting an Offer that it is free from viruses and has been checked with an up-to-date virus checking program.
- 8.3 When the Offer document/s is processed a system generated receipt confirmation shall be emailed to the Offeror.
- 8.4 An Offeror may submit one or more Offers in response to the Invitation. Part Offers, being Offers that only address part of the Invitation, may be considered at the entire discretion of the Principal.
- 8.5 The Offeror must ensure that its Offer is received by the Principal by the Closing Date as specified in item 2 of Part 1 of the Invitation.
- 8.6 Lodgement of an Offer in the manner specified in the Invitation will constitute an Offer by the Offeror to supply Goods and/or Services on the terms of the Invitation, subject to any proposed Additional Provisions specified in Response Form 6.3.
- 8.7 Unless otherwise specified in item 9 of Part 1 of the Invitation, Offers sent or transmitted to the Principal by email and/or facsimile will **not** be considered.
- 8.8 Unless otherwise specified in item 10 of Part 1 of the Invitation, the Principal will retain all documents and any samples (if applicable) submitted in response to the Invitation.
- 9. NON-CONFORMING OFFERS**
- 9.1 Failure to comply with all or any of the requirements of the Invitation may result in an Offer being considered non-conforming. The Principal may for any reason decline to consider any non-conforming Offers.
- 10. ALTERNATIVE BRANDS**
- 10.1 Where any specific brand or model of Goods is stated by the Principal in the Specifications, the Offeror may submit other brands or models which, in the opinion of the Offeror are at least equivalent to the brand or model of Goods specified. Pursuant to clause 27 the Principal reserves the right to accept an Offer which the Principal considers the best solution for its requirements.
- 10.2 The Principal is not obliged to provide reasons for non-acceptance of any non-conforming Offer.
- 11. ALTERNATIVE GOODS AND/OR SERVICES**
- 11.1 Offerors may submit an:
- (a) alternative Offer; and/or
 - (b) alternative technical and innovative solution.
- 11.2 The Offeror must include details of the benefits to the Principal of the alternative Offer and/or solution.
- 11.3 Pursuant to clause 27 the Principal reserves the right to accept an Offer which the Principal considers the best solution for its requirements.
- 12. CONFIDENTIAL INFORMATION**
- 12.1 The Offeror or any potential Offeror (including an entity who obtains the information in the Invitation but does not submit an Offer), must ensure that it and its officers, employees, agents and sub-contractors who are in possession of Confidential Information, keep that information confidential.
- 12.2 If requested by the Principal, the Offeror or potential Offeror must complete a confidentiality undertaking, in a form acceptable to or provided by the Principal, from itself and/or from each of its officers, employees, agents and sub-contractors who receive the information.
- 13. PREVIOUS DISCUSSIONS/UNDERTAKINGS**
- 13.1 On the release of the Invitation, any previous undertakings, representations, promises or conditions in respect of the subject matter of the Invitation, shall not be binding on the Principal.

14. COMPLIANCE WITH LAWS AND OTHER REQUIREMENTS

- 14.1 All Goods and/or Services offered by the Offeror, unless otherwise specified, shall comply with all applicable:
- (a) legislative requirements; and
 - (b) any Government code, policy or guideline and Australian/New Zealand Standard, and where an Australian/New Zealand Standard does not exist, the relevant and current International Standard (ISO) shall apply.

15. INSURANCES

- 15.1 In submitting its Offer, the Offeror must provide acceptable evidence of the following insurance policies which are to be maintained at the Offeror's expense:
- (a) Workers Compensation insurance in accordance with applicable legislation for the Offeror's employees;
 - (b) Public Liability insurance to the value of at least the amount specified in Response Form 6.4 – item 19 of Schedule 1, in respect of each claim;
 - (c) Professional Indemnity insurance, if specified in Response Form 6.4 – item 20 of Schedule 1, for the amount specified in Response Form 6.4 - item 20 of Schedule 1 in respect of each claim, and which shall be maintained by the Successful Offeror for a continuous period of four years, after the expiry date of the Arrangement or termination of the Arrangement, unless otherwise specified in Response Form 6.4 – item 20 of Schedule 1; and
 - (d) any other insurances, as specified in Response Form 6.4 item 21 of Schedule 1.
- 15.2 If, at the time of submitting its Offer, the Offeror does not have the requested insurance cover or to the specified amount, the Offeror must indicate in its Offer its willingness to effect such insurances at its own expense and provide acceptable evidence before the Principal can finalise its evaluation of the Offer.
- 15.3 If, at the time of submitting its Offer, the Offeror is a member of a scheme approved under the *Professional Standards Act 2004 (Qld)*, the Offeror must notify the Principal as required under that Act.
- 15.4 Subject to clause 15.5, the Offeror must provide in its Offer a certificate of currency for each insurance policy. If the Offeror is not identified as the insured on the policy, the Offeror must clearly identify the relationship of the insured to the Offeror and how the Offeror is covered by the policy.
- 15.5 A letter certifying currency for the Workers Compensation policy is acceptable.
- 15.6 Renewal notices, invoices or account statements are not acceptable documentation, for the purpose of clauses 15.4 and/or 15.5.

16. PRICES OFFERED

- 16.1 Prices specified in the Offer must:
- (a) be in Australian currency;
 - (b) indicate GST exclusive and GST inclusive pricing and if applicable, any other government taxes or duty (e.g. import duty, etc);
 - (c) include the costs of suitable packaging, delivery and installation, unless otherwise specified in the Invitation; and
 - (d) if subject to fluctuation, include particulars of the price fluctuation formula and all variables, including the timing of the fluctuation.
- 16.2 The Offeror must ensure that the Offer clearly states any trade, settlement and/or early payment discounts from the Prices offered.
- 16.3 The Principal reserves the right not to accept an Offer which requires payment in advance for the Goods and/or Services.

17. COMPETITIVE NEUTRALITY

- 17.1 Offers submitted by a government owned business, a local government and/or Commonwealth, State or Territory agency or authority, must be priced to comply with the competitive neutrality principles of the Offeror's respective jurisdiction.

18. DELIVERY PERIOD

- 18.1 The Offeror must state in Response Form 6.4 – item 11 of Schedule 1, the Delivery Period for the Goods and/or Services.

19. OPENING OF OFFERS

- 19.1 Offers will not be opened publicly, unless otherwise specified in item 11 of Part 1 of the Invitation.

20. INVITATION TO OFFER PROCESS

- 20.1 The conduct of the Invitation Process does not give rise to any legal or equitable relationship.
- 20.2 The Principal may cancel or vary the Invitation Process at any time, whether before, on or after the Closing Date for Offers.

20.3 No Offeror shall be entitled to claim compensation or loss from the Principal for any matter arising out of the Invitation Process, including but not limited to any failure by the Principal to comply with the Standing Offer Arrangement - Conditions of Offer.

21. EVALUATION OF OFFERS

- 21.1 The offer evaluation process will involve an assessment of conforming Offers, and any non-conforming Offers the Principal may choose to consider, against the Evaluation Process and Criteria.
- 21.2 The Principal may consider innovative solutions to meet the Specification requirements.
- 21.3 The Principal reserves the right to short list Offerors during the evaluation process using the evaluation criteria as specified in the Evaluation Process and Criteria.
- 21.4 Irrespective of whether it is stipulated in the Evaluation Process and Criteria, the evaluation process may also involve, but is not limited to, discussions with Offerors, reference checks, financial checks, credit checks, company searches, site visits and presentations from some or all Offerors.
- 21.5 If specified in the Specifications, an Offeror must submit for trial or inspection, within a specified time period nominated by the Principal, a sample of the same make and model of Goods specified in its Offer.

22. POST-OFFER NEGOTIATIONS OR OTHER FORM OF COMMUNICATION

- 22.1 The Principal reserves the right to enter into post Offer negotiations with one or more Offerors.
- 22.2 The Principal may interview an Offeror in relation to its Offer. The Offeror should be represented at the interview by personnel who are authorised to make decisions on behalf of the Offeror and who are conversant with all technical, financial and contractual details of the Offer, as applicable.
- 22.3 The Principal may seek further information from the Offeror in writing (e.g. letter, email or facsimile). Any information provided by or on behalf of the Offeror verbally must promptly be confirmed in writing if so required by the Principal.
- 22.4 Any amendment to the Offer occurring as a result of post-offer negotiations or as a result of a request for further information or clarification between the Parties, which is documented in writing, will form part of the Offer.

23. COMMISSIONS, INCENTIVES, COLLUSION AND CONFLICTS OF INTEREST

- 23.1 An Offeror and/or its representatives must not give or offer to the Principal or any officer or employee of the Principal, or to a parent, spouse, child or associate of an officer or employee, any inducement, gift or reward, which could in any way tend to influence the Principal's actions in relation to an Offer.
- 23.2 If the Principal discovers at any time that an Offeror breached clause 23.1, the Principal may not consider that Offer.
- 23.3 The Offeror warrants that the Offer is in all respects an independent Offer and that no collusion has taken place between the Offeror and any other offeror, potential offeror or interested party in the preparation of the whole or any part of the Offer.
- 23.4 The Offeror warrants that to the best of its knowledge, as at the date of the Offer neither the Offeror nor any of its officers or employees have, or are likely to have, any Conflict of Interest in any matters connected with the Invitation Process.
- 23.5 If a Conflict of Interest or risk of Conflict of Interest arises during the Invitation Process, the Offeror must immediately give written notice of the Conflict of Interest, or the risk of it to the Contact Officer.

24. STANDING OFFER ARRANGEMENT

- 24.1 The Successful Offeror agrees that:
- (a) an Eligible Customer may enter into a Contract with the Successful Offeror under the Standing Offer Arrangement Conditions by placing an Order at any time until the expiry date of the Arrangement, and the Successful Offeror will be bound by any such Order, unless the Arrangement:
 - (i) is suspended; or
 - (ii) has been terminated at the time the Order is in placed;
 - (b) the Eligible Customer may at its discretion engage other contractors to provide the Goods and/or Services;
 - (c) an Eligible Customer is not obliged to request any or a minimum number of Goods and/or Services from the Successful Offeror under the Arrangement;
 - (d) the Principal may cancel the Arrangement at any time by written notice to the Successful Offeror, and:
 - (i) the Successful Offeror will not enter into any new Contracts; and
 - (ii) any existing Contracts will not, unless the Contract requires it, be affected in any way whatsoever; and
 - (e) any Non-Government Organisation or Queensland Government Body may purchase the Goods and/or Services under the Arrangement.

- 24.2 The Principal will monitor the performance of the Successful Offeror on a periodic basis as specified by the Principal until the expiry date of the Arrangement, unless terminated sooner.
- 24.3 The Principal does not guarantee that any Order/s will be placed with the Successful Offeror under the Arrangement.

25. UTILISATION OF STANDING OFFER ARRANGEMENT BY OTHER ENTITIES

- 25.1 The Principal reserves the right to allow Queensland Government departments or agencies, Queensland Government Bodies, Non-Government Organisations and/or Commonwealth, State/s or Territories to purchase the subject Goods and/or Services against any Arrangement which is established as a result of the Invitation.

26. EXISTING ARRANGEMENTS WITH THE QUEENSLAND GOVERNMENT OR OTHER ENTITIES

- 26.1 The Offeror must specify in Response Form 6.5 whether they have any existing supply arrangements with Queensland Government departments or agencies, Queensland Government Bodies and/or Non-Government Organisations. The information collected in the above Response Form may be shared across the Queensland Government to potentially avoid duplication of arrangements.

27. ACCEPTANCE AND/OR REJECTION

- 27.1 The Principal reserves the right, at its entire discretion to:
- (a) accept one Offer, or more than one Offer, for the whole of its requirements;
 - (b) accept separate Offers for any portion of its requirements;
 - (c) accept one Offer, or more than one Offer, for any portion of its requirements;
 - (d) accept an Offer that the Principal considers the best solution;
 - (e) not accept the lowest Offer; or
 - (f) not accept any Offer.

28. SUCCESSFUL OFFEROR

- 28.1 If the Principal elects to accept an Offer the Principal will issue a Deed of Agreement to the Successful Offeror and upon its execution by the Principal and Successful Offeror, an Arrangement will come into existence.

29. ADVICE TO UNSUCCESSFUL OFFERORS

- 29.1 Unsuccessful Offerors will be notified in writing that they have been unsuccessful.

30. DECISION AND DEBRIEFING

- 30.1 All Offerors, whether successful or unsuccessful may seek feedback from the Contact Officer at the completion of the Invitation Process.
- 30.2 A feedback or debriefing session shall be an opportunity to provide the successful or unsuccessful Offeror with information that may assist the Offeror to improve any future offers submitted to the Principal. The feedback or debriefing session is not an opportunity to discuss the outcome of the evaluation of Offers to the Invitation nor the relative merits of any other Offer submitted.
- 30.3 The Principal will not enter into any correspondence, oral or written, about its selection decision(s).

31. NO ADVERTISEMENT

- 31.1 The Successful Offeror will not make any public announcement or advertisement in any medium in relation to the Invitation Process without the prior written approval of the Principal.

32. GOVERNING LAW

- 32.1 Subject to clause 20.1, any Offer submitted in response to the Invitation shall be governed by and construed in accordance with the laws of Queensland and the Parties submit to the non-exclusive jurisdiction of the courts of Queensland.

33. RIGHT TO INFORMATION AND DISCLOSURE

- 33.1 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.
- 33.2 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.
- 33.3 Information contained in an Offer is potentially subject to disclosure to third parties.
- 33.4 If disclosure under the RTI Act, and/or general disclosure of its Offer or part thereof, would be of substantial concern to an Offeror, because it would disclose trade secrets, information of commercial value, the purposes or results of research or other information of

a confidential nature, this should be indicated in Response Form 6.1. The Principal cannot guarantee that any information provided by the Offeror, including information that is identified by the Offeror in Response Form 6.1, will be protected from disclosure under the RTI Act.

- 33.5 Despite any other provision of the Invitation and/or Invitation Process, the Principal is entitled to publish on the Queensland Government Chief Procurement Office website: www.ggcpo.qld.gov.au under "*eTender system for Government Suppliers*, or by any other means, the following details:
- a) the name and address of the Principal and/or Eligible Customer;
 - b) a description of the Goods and/or Services;
 - c) Arrangement commencement date or award date;
 - d) Contract value;
 - e) name and address of the Successful Offeror; and
 - f) procurement method used.
- 33.6 Any proposed variation by the Offeror to clause 33.5 which takes away or reduces the entitlements that would otherwise be provided to the Principal under that clause will be null and void.
- 33.7 For more information regarding the RTI Act, please contact the RTI Officer as specified in item 12 of Part 1 of the Invitation.