

Conditions of Offer

For the Provision of Goods and/or Services

Version 001- dated 12 February 2007



Introduction

In 2006 the Department of Public Works undertook a major review of the conditions of offer 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.

Copyright

© **State of Queensland** (Department of Public Works) 2007.
All rights reserved.

This document may be reproduced, transmitted or stored, in electronic form or otherwise, for the purpose of submitting offers to enter into contracts with Queensland Government Agencies and for training, educational and advice purposes associated with this document. Otherwise, no part of this document may be produced by any process, electronic or otherwise, in any material form or transmitted to any other person or stored electronically in any form, without prior written permission of the copyright holder, except as permitted under the *Copyright Act 1968 (Cth)*.

Any use of this document will be at the risk of the user.

Any inquiries relating to the reproduction of these conditions should be directed to:

Director, Queensland Purchasing
Department of Public Works
GPO Box 123
Brisbane Qld 4001

Further information may be obtained from the Queensland Purchasing's website on

www.ggm.qld.gov.au

Table of Contents

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
19. Opening of Offers
20. Invitation to Offer Process
21. Post-Offer Negotiations or other Form of Communication
22. Evaluation of Offers
23. Commissions, Incentives, Collusion and Conflict Of Interest
24. Acceptance and/or Rejection
25. Successful Offeror
26. Advice to Unsuccessful Offeror
27. Decision and Debriefing
28. No Advertisement
29. Governing Law
30. Freedom of Information

CONDITIONS OF OFFER

1. Definitions and Interpretation

1. Definitions

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

“Agency” means the 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 behalf of any Cluster Members;

“Business Day” means between 9.00am and 5.00pm on a weekday other than a Saturday, Sunday or public holiday at the Agency’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 Agency;

“Cluster Members” means the Agencies and their representatives (if any) as specified in item 3 of Part 1 of the Invitation;

“Conditions of Contract” means the terms and conditions of the Conditions of Contract Version 001 - dated 12 February 2007 and includes the attached Schedules and any additional Conditions of Contract, as specified in Part 5 of the Invitation;

“Conditions of Offer” means these terms and conditions, any additional terms and conditions as specified in Parts 1 and 3 of the Invitation, which regulate the pre-contractual relationship between the Parties.

“Confidential Information” means all information obtained by the Offeror in the course of submitting an Offer as specified in item 5 of Part 1 of the Invitation;

“Conflict of Interest” includes engaging in any activity, or having any interest which conflicts or may conflict with the ability of the Offeror to submit an Offer in good faith and objectively;

“Contact Officer” means the person nominated by the Agency 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 Agency as the Contact Officer;

“Contract” means a legally binding contract as agreed between the Agency and the successful Offeror on the terms and conditions of the documentation specified in clause 1.2.5, for the provision of the Goods and/or Services;

“Contractor” means the entity specified in item 2 of Schedule A of the Invitation, from whom the Goods and/or Services are being procured;

“Deliverable” means the Goods and/or Services to be supplied to the Agency by the Contractor in accordance with the Contract;

“Delivery Date” means the date on or by which the Goods and/or Services will be supplied and/or performed as specified in the Response Forms, by the Contractor to the Agency;

“Delivery Period” means the period in which the Goods and/or Services will be supplied and/or performed as specified in item 8 of Schedule A of the Invitation, by the Contractor to the Agency;

“Evaluation Process and Criteria” means Part 4 of the Invitation which specifies the process and criteria by which the Agency will evaluate Offers;

“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 this 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;

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

“Invitation to Offer Details” means the key requirements relating to submitting an Offer, which is 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 and the subsequent evaluation of Offers;

“Letter of Acceptance” means a letter from the Agency to the successful Offeror accepting the Offeror’s Offer;

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

“Offeror” means the entity specified in the Response Form 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 Agency, which if issued forms part of the Contract;

“Parties” means Agency and Offeror;

“Price” means the itemised price or schedule of rates payable by an Agency for a Deliverable, as specified in the Response Forms, in Australian dollars and unless otherwise specified in the Response Forms is inclusive of packaging, handling, freight, GST and all other duties, taxes and charges;

“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 Contract;

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

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

Interpretation

- 1.2.1 In these 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 Conditions of Offer.
- 1.2.2 The following rules shall apply in interpreting these 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 clause, Response Form, Schedule, attachment or annexure is a reference to a clause, Response Form, Schedule, attachment or annexure to these 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) Conditions of Offer;
 - (c) Specifications;
 - (d) Evaluation Process and Criteria;
 - (e) Conditions of Contract; and
 - (f) Response Forms.

- 1.2.5 The following documents will constitute the entire Contract between the Agency and the successful Offeror:
- (a) Letter of Acceptance and/or other form of document (e.g. Order) by which a binding contract is formed between the Agency and the Contractor including completed Schedules A, B and C which are attached to the Letter of Acceptance and/or other form of document (e.g. Order);
 - (b) Conditions of Contract;
 - (c) Specifications;
 - (d) Contractor's Offer; and
 - (e) any other documentation forming part of the Contract, as agreed in writing between the Parties.
- 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.

2. COMPLIANCE WITH THE INVITATION

- 2.1 Each Offeror must ensure that its Offer complies with the terms and conditions contained within this 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 the Response Forms any departures from the Conditions of Offer, Specifications and/or Conditions of Contract as set out in the Invitation which will form part of its Offer.
- 2.4 Departures which are not specified in the Response Form 6.2 will not be considered by the Agency.

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 Agency and the Offeror; or
 - (b) until the Agency 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 an individual - the Offeror's full name (including given names and surname) and address;
 - (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); and
 - (iv) the name and company title of the person signing the Offer on behalf of the company;
 - (c) in the case of a trust - the full name (including given names and surname) and address of each trustee of the trust;
 - (d) 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;
 - (e) 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;
- (f) in the case of joint Offers (including partnerships), the information detailed in paragraphs (a) to (e) for each Offeror;
- (g) 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
- (h) the active Australian Business Number (ABN) of the Offeror/s (if applicable).

5.2 It is not a requirement under these Conditions of Offer that Offerors possess an 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 Agency with their Offer; or
- (b) provide evidence of their ABN before any Contract can be entered into with the Agency.

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 this Invitation or in relation to any matter contained in this Invitation, does so at its own risk and expense.

7.3 If an Offeror requires information or clarification of any part of the Invitation:

- (a) the Offeror must direct its enquiries to the Contact Officer nominated in item 4 of Part 1 of the Invitation;
- (b) the Agency will not be bound by any information or clarification provided orally in respect of the Invitation, but only by advice or information provided in writing to Offerors; and
- (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.

7.4 An Offeror may not claim from the Agency any 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 Agency 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 Internet, it is the responsibility of each Offeror to regularly check the Internet site for any changes to the Invitation prior to the Closing Date. The Agency 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 specified in item 7 of Part 1 of the Invitation;
- (b) supplied in the number of copies and submitted in the format specified in item 7 of Part 1 of the Invitation;
- (c) endorsed on the front of the sealed package specified in item 7 of Part 1 of the Invitation; and
- (d) directed to the Agency at the address specified in item 7 of Part 1 of the Invitation.

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 login details and unique password for this Invitation, received when downloading 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 7MB (7000KB); 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; and

when the Offer document/s is processed a system generated receipt confirmation shall be emailed to the Offeror.

- 8.3 An Offeror may submit one or more Offers in response to this Invitation. Part Offers, being Offers that only address part of the Invitation, may not be considered by the Agency.
- 8.4 The Offeror must ensure that its Offer is received by the Agency by the Closing Date as specified in item 2 of Part 1 of the Invitation.
- 8.5 Lodgement of an Offer in the manner specified in the Invitation will constitute an Offer by the Offeror to supply the Goods and/or Services on the terms of the Invitation and at the price stated in the Offer.
- 8.6 Unless otherwise specified in item 9 of Part 1 of the Invitation, Offers sent or transmitted to the Agency by email and/or facsimile will **not** be considered.
- 8.7 Unless otherwise specified in item 10 of Part 1 of the Invitation, the Agency will retain all documents and any samples (if applicable) submitted in response to this 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 Agency 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 Agency 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 24 the Agency reserves the right to accept an Offer which the Agency considers the best solution for its requirements.

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 Agency of the alternative Offer and/or solution.
- 11.3 Pursuant to clause 24 the Agency reserves the right to accept an Offer which the Agency considers the best solution for its requirements.

12. CONFIDENTIAL INFORMATION

- 12.1 If the Agency specifies in item 5 of Part 1 of the Invitation that certain parts or information in this Invitation are confidential, then the Offeror or any potential Offeror (including an entity who obtains the information in this Invitation but does not submit an Offer), must ensure that it and its officers, employees, agents and sub-contractors who are in possession of that information keep that information confidential.
- 12.2 If requested by the Agency, the Offeror or potential Offeror must complete a confidentiality undertaking, in a form acceptable to or provided by the Agency, 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 this Invitation, any previous undertakings, representations, promises or conditions in respect of the subject matter of this Invitation shall not be binding on the Agency.

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) statutory requirements; and
 - (b) Government code, policy or guideline and any current 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 the Response Forms in respect of each claim;
 - (c) Professional Indemnity insurance, if specified in the Response Forms, for the amount specified, which shall be maintained by the Contractor for a continuous period after the Delivery Date as specified in the Response Forms; and
 - (d) any other insurances, as specified in the Response Forms.
- 15.2 If, at the time of submitting its Offer, the Offeror does not have the requested insurance cover or to the specified values, the Offeror must indicate in its Offer its willingness to effect such insurances at its own expense and provide acceptable evidence before the Agency 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*, the Offeror must notify the Agency as required under that Act.
- 15.4 Subject to clause 15.5, the Offeror must provide in its Offer a Certificate of Currency or other evidence satisfactory to the Agency, for each insurance policy. If the Offeror is not identified as the insured on the policy, the Certificate of Currency or other evidence satisfactory to the Agency, 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 Agency 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, or a State or Commonwealth agency or authority, must be priced to comply with the competitive neutrality principles of the Offeror's respective jurisdiction.

18. DELIVERY

- 18.1 The Offeror must state in the Response Forms, the Delivery Date or Delivery Period as applicable, for the Goods and/or Services in the event that the Offer is accepted by the Agency.

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 Agency 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 Agency for any matter arising out of the Invitation Process, including but not limited to any failure by the Agency to comply with the Conditions of Offer.

21. POST-OFFER NEGOTIATIONS OR OTHER FORM OF COMMUNICATION

- 21.1 The Agency reserves the right to enter into post Offer negotiations with one or more Offerors.
- 21.2 The Agency 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.
- 21.3 The Agency 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 Agency.
- 21.4 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.

22. EVALUATION OF OFFERS

- 22.1 The offer evaluation process will involve an assessment of conforming Offers, and any non-conforming Offers the Agency may choose to consider, against the Evaluation Process and Criteria.
- 22.2 The Agency may consider innovative solutions to meet the Specification requirements.
- 22.3 The Agency reserves the right to short list Offerors during the evaluation process using the evaluation criteria as specified in the Evaluation Process and Criteria.
- 22.4 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, site visits and presentations from some or all Offerors.
- 22.5 If specified in the Specifications, an Offeror must submit for trial or inspection, within a specified time period nominated by the Agency, a sample or the same make and model of Goods specified in its Offer.

23. COMMISSIONS, INCENTIVES, COLLUSION AND CONFLICTS OF INTEREST

- 23.1 An Offeror and/or its representatives must not give or offer to the Agency or any officer or employee of the Agency, 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 Agency's actions in relation to an Offer.
- 23.2 If the Agency discovers at any time that an Offeror breached clause 23.1, the Agency may not consider that Offer.
- 23.3 The Offeror warrants that the Offer is in all respect 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. ACCEPTANCE AND/OR REJECTION

- 24.1 The Agency reserves the right 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 Agency considers the best solution;
 - (e) not accept the lowest Offer; or
 - (f) not accept any Offer.

25. SUCCESSFUL OFFEROR

- 25.1 If the Agency elects to accept an Offer the Agency will issue a Letter of Acceptance and/or other form of document (e.g. Order) to the successful Offeror and upon its receipt by the Offeror a Contract will come into existence.

26. ADVICE TO UNSUCCESSFUL OFFERORS

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

27. DECISION AND DEBRIEFING

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

28. NO ADVERTISEMENT

- 28.1 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 Agency.

29. GOVERNING LAW

- 29.1 Subject to clause 20.1, any Offer submitted in response to this 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.

30. FREEDOM OF INFORMATION

- 30.1 The *Freedom of Information Act 1992* (FOI Act) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies.
- 30.2 The FOI Act requires that documents be disclosed upon request, unless there are valid grounds under the FOI Act for exempting the documents from disclosure.
- 30.3 Information contained in an Offer is potentially subject to disclosure to third parties.
- 30.4 If disclosure of its Offer or part thereof, would be of substantial concern to an Offeror, the relevant documents in the Offer should be stamped "Commercial-in-Confidence". In such case, the Agency will formally consult with and obtain the view of the Offeror before disclosure.
- 30.5 For more information regarding the FOI Act, please contact the FOI Officer as specified in item 12 of Part 1 of the Invitation.