

Department of Energy and Public Works

Conditions of Working with QBuild

Consultants

December 2020

Important notice:

Notice of Machinery of Government change

As notified in the Queensland Government Gazette on 12 November 2020, QBuild became a business unit of the newly formed **Department of Energy and Public Works** as a result of a machinery-of-government changes implemented following the 2020 election.

What this means

This is a change in name only and will not affect any invitations, arrangement or contracts. The Principal remained the same entity, namely: The State of Queensland.

Please note:

All letters and invoices and other correspondence submitted to QBuild and with reference to the department, must include the new name the **Department of Energy and Public Works** effective immediately.

1. QBuild general business rules of registration for consultants and contractors providing professional services

These *Conditions of Working with QBuild – Consultants* apply to:

- Building industry consultants e.g. architects, engineers, quantity surveyors.
- Non-building industry contractors providing professional or administrative services e.g. human resources, information technology, communications, finance, legal.
- Management consultants providing expert advice e.g. related to the re-organisation of the business or development of policy.

They are hereafter referred to generically as consultants.

1.1 Business rules. By registering with QBuild consultants agree to the following business rules:

- a. All required licenses, certificates and insurance policies kept current.
- b. Registration applies only to the provision of services for QBuild.
- c. Registration with QBuild shall be for two years, subject to Clause 6 or agreement to earlier cancellation at the Registrant's request.
- d. Consultants and workers engaged in the provision of services shall comply with all relevant Acts and legislation.
- e. Consultants and workers engaged in the provision of services shall comply with this *Conditions of Working with QBuild – Consultants* document and any other QBuild conditions that may apply to the specific services.
- f. All reference to days means calendar days unless stated otherwise.
- g. Contracts will not be assigned (novated) without prior written approval of the Principal.
- h. All claims for payment shall be on a tax invoice complying with GST law (refers to *A New Tax System (Goods and Services Tax) Act 1999*).
- i. Consultants and workers maintain the confidentiality of any commercial-in-confidence information obtained about QBuild.
- j. QBuild reserves the right to change or vary its *Conditions of Working with QBuild* or any of its *Conditions of Contract* from time to time (current versions are available from www.business.qld.gov.au/qbuild)
- k. The Consultant must ensure that all representations, warranties, declarations, statements, information and documents ("information") made or provided by the Consultant in connection with applying for registration and working with QBuild are complete, accurate, up-to-date and not misleading in any way. The Consultant must immediately notify QBuild if any information is or becomes incomplete, inaccurate, out-of-date or misleading in any way. Consultants shall notify QBuild of any changes to registration details by email or written advice.
- l. Cancellation of QBuild registration may result in the cancellation of any or all current contracts.
- m. Details of consultants and workers may be disclosed to third parties or shared with other public sector agencies (refer to clause 11 – Right to Information and disclosure).
- n. QBuild reserves the right to refuse any registration application by issue of a notice to that effect to the Applicant or the approval of any sub-consultant, at its sole discretion without giving reasons.
- o. All references to \$ or dollars means Australian dollars (AUD).
- p. For Small Businesses, to assist QBuild to pay you in accordance with the Queensland Government On-time Payment Policy, QBuild requires to you first register your details on the On-time Payment Small Business Register <https://www.business.qld.gov.au/starting-business/advice-support/support/small-business/on-time-payment-policy/on-time-policy>. A Small Business has the meaning as defined in clause 3.2.1 in the *Queensland Government – On-time Payment Policy*.

Please note: Prequalification. Building industry consultants are required to be prequalified with the Department of Energy and Public Works for commissions valued at greater than \$60,000 (refer to <https://www.business.qld.gov.au/industries/building-property-development/building-construction/supply-queensland-government/prequalifying-major-projects>)

2. Invoices and payments

2.1 Tax invoice. The following conditions apply to tax invoices submitted to QBuild:

- a. A tax invoice shall contain the following information:
 - Australian Business Number (ABN)
 - Australian Company Number (ACN) (where applicable)
 - Registered Business Name
 - The date/s that the actual work was performed
 - The amount claimed
 - Goods and Services Tax (GST) component
 - Description of the services
 - Work order number
 - Field release order number (where applicable)
 - Purchase order number (where applicable)
 - Declare sub-consultants engaged.
- b. Consultants shall not issue a claim for payment or tax invoice for services that have not been performed or supplied.
- c. Failing to submit tax invoices in accordance with contractual time frames will constitute a minor breach under these conditions.

2.2 Payments. The Queensland Government – On-time Payment Policy applies when payments fall under the scope of that policy.

- a. For the provision of consulting services, payment of a valid tax invoice shall be made within 21 days of the invoice date.
- b. When payments fall under the Queensland Government – *On-time Payment Policy**, otherwise valid invoices received more than two (2) days after the invoice date shall be treated as in dispute and payment shall be made within 20 days of the receipt date.

*A copy of the Queensland Government – On-time Payment Policy is available from

<https://www.business.qld.gov.au/starting-business/advice-support/support/small-business/on-time-payment-policy>.

2.3 QBuild preferred payment method. QBuild preferred method of payment is Electronic Funds Transfer (EFT). Consultants are responsible for timely advice to QBuild of changes to bank or payment details.

2.4 No third-party payments. Intending registrants should note that QBuild will only pay the contracted party and will not pay third parties or any factoring arrangement entities.

3. Specific insurance requirements

3.1 Mandatory insurances. Consultants shall provide in their application for registration and before commencing any works or services, certificates of currency as proof of holding the following insurance policies and shall maintain these policies for the duration of any contracts for works or services:

- a. public liability of a minimum of \$20 million (unless another amount is specifically stated in contracts, arrangements or agreements); *and*

- b. worker's compensation in keeping with statutory requirements or equivalent for self-employed persons.
- c. Professional indemnity of \$1 million (unless another amount is specifically stated in contracts and agreements).

3.2 Other insurances. Other types of insurance cover may be required in specific circumstances. In such cases, QBuild shall provide appropriate direction.

3.3 Notwithstanding 3.1 and 3.2 Consultants note that having insurance in accordance with the contract does not limit the consultant's liability.

3.4 Failing to maintain insurances as required in 3.1 and 3.2 will constitute a significant breach of these conditions.

4. Code of Conduct

4.1 Code of Conduct. It is important for QBuild as a business unit of the Department of Energy and Public Works to maintain public confidence in its activities and to safeguard public resources. The reputation of QBuild rests with the ethical conduct of all those who perform work or services for QBuild, including consultants and others who are not employees of QBuild.

QBuild requires consultants, workers, students and volunteers to comply with the [Queensland Government Supplier Code of Conduct](#) as well as the provisions of the [Code of Conduct for the Queensland Public Service](#).

Key principles and values of the code are:

1. Integrity and impartiality
2. Promoting the public good
3. Commitment to the system of government
4. Accountability and transparency

Consultants and workers have a responsibility to always conduct and present themselves in a respectful and professional manner consistent with the Queensland Government Supplier Code of Conduct and the Code of Conduct for the Queensland Public Service. QBuild reserves the right, at its entire discretion, to exclude any worker contravening the Queensland Government Supplier Code of Conduct and the Code of Conduct for the Queensland Public Service without issuing a notice to show cause.

4.2 Reporting. Consultants are to report suspected official misconduct, fraudulent or corrupt conduct, maladministration, criminal activity, negligent or improper management, or any danger to public health or safety or the environment.

4.3 No advertising. Consultants shall not make any public announcement or advertisement in any medium in relation to any contracts or arrangements with QBuild, without the consent of QBuild.

4.4 Gifts. Consultants shall not offer gifts to QBuild staff. If gifts are offered, they shall not be accepted or retained by any QBuild staff.

4.5 Code of Tendering. QBuild and all consultants are required to comply with the *Code of Tendering* (AS4120-1994). The *Code of Tendering* (AS4120-1994) is available at <http://infostore.saiglobal.com> or for perusal at all QBuild offices.

4.6 Department of Education (DoE) facilities. Consultants and workers engaged at DoE facilities:

- a. Shall obtain a Work Area Access Permit which will be issued to consultants either by QBuild (with the QBuild work order) or by the DoE representative in charge of the particular site
- b. Shall not, under any circumstances, enter or use student toilets within DoE facilities, unless they are actually working in student toilets
- c. Shall not communicate in any way with any student, even if the student is known by, or is related to, the consultant or their workers, except when it is necessary to give a safety direction.

- 4.7 Client agency requirements.** Where other client agencies have specific requirements of consultants and workers when on site, for example a Drug and Alcohol Policy and any associated business rules, consultants and workers shall comply as and when advised by QBuild.
- 4.8 Collusion.** Consultants shall not engage in collusive practices as defined in the *Queensland Code of Practice for the Building and Construction Industry*.
- 4.9 Responsibility for workers.** Consultants are responsible for the conduct of all workers and are required to ensure that workers adhere to QBuild conditions at all times.
- 4.10 Responsibility to employees.** Arrangements or practices designed to avoid awards, registered agreements and/or legislative obligations are not permitted, including inappropriately treating a genuine employee as an independent consultant and inappropriate application of taxation arrangements.

5. Other important matters

- 5.1 Fire ant compliance.** Consultants who perform works or services within the fire ant biosecurity zone and who deal with fire ant carriers that are high risk materials have a General Biosecurity Obligation and may be required to obtain a Biosecurity Instrument Permit. Consultants shall comply with the *Biosecurity Act 2014*, the *Biosecurity Regulation 2016* and all requirements of Biosecurity Queensland. Biosecurity Queensland conducts free training sessions to assist with the identification of fire ants and movement control requirements. Visit www.daf.qld.gov.au or contact Biosecurity Queensland on 13 25 23.

Note: In these conditions, “General Biosecurity Obligation” has the meaning given it in section 23 of the *Biosecurity Act 2014*.

- 5.2 For services provided at youth detention centres or education and care premises where education** the consultants or worker must determine their responsibility for applying and/or holding a blue card in accordance with the *Working with Children (Risk Management and Screening) Act 2000*.

6. Working together to resolve differences

- 6.1 The dispute process.** QBuild encourages local level resolution of any differences or disputes. The following process should be followed:
- Consultants should first approach the relevant QBuild Senior Purchasing Advisor.
 - If the matter is still unresolved, Consultants should follow these stages in QBuild appeal process.

Stage 1: Lodgement of an appeal. Consultants shall provide written advice, including any supporting evidence, about the matter to the local QBuild Regional Manager or Regional Director.

Stage 2: Investigation of appeal. QBuild Regional Manager or Regional Director shall then investigate the appeal and shall respond in writing on the results of the investigation within fourteen (14) days of receiving the appeal.

Stage 3: Escalation of appeal. If the appeal remains unresolved, the consultant may refer the matter to the Executive Director, QBuild.

Please note: Where consultants are engaged under a contract that defines a different dispute resolution process, those contract conditions will take precedence over the above procedures.

7. Breaches

- 7.1** A breach may be either a breach of contract; in which case it will be dealt with under the terms and conditions of the specific contract (if the contract is still on foot); or it may be a breach of these *Conditions of Working with QBuild – Consultants*; in which case it will be dealt with as follows:
- Minor breaches** (defined as minor or isolated behavioural incidents) shall be addressed as follows:

- QBuild shall issue a verbal warning and provide the consultant with the opportunity to rectify the situation, review its systems and/or implement corrective action. The consultant shall complete the corrective action within the timeframe determined by QBuild.
 - If the consultant commits a further minor breach, QBuild shall issue the consultant with a written notice detailing the breach and required rectification within the stated timeframes in the notice.
 - If the consultant commits a third minor breach, this may constitute a significant breach.
- b. Significant breaches.** Significant breaches include (but are not limited to) the following:
- recurring minor breach
 - a breach which results or may result in the termination of a contract
 - a breach of the *Code of Conduct* for the *Queensland Public Service*
 - a breach of any relevant legislation, including but not limited to the *Queensland Work Health and Safety Act 2011* and the *Queensland Building and Construction Commission Act 1991* (for example, loss of licence or undertaking or permitting another person to undertake building works without a licence)
 - non-payment of sub-consultants
 - committing an act of insolvency
 - the non-payment of a debt owing from the consultant to the Principal following an issue of a notice to the consultant by the Superintendent or Principal.
 - any breach of these *Conditions of Working with QBuild – Consultants*.

Significant breaches shall be addressed as follows:

- QBuild may give the consultant written notice to show cause why its registration should not be cancelled and may require the consultant to provide a written response to QBuild within a stated timeframe why QBuild should not cancel the consultant's registration.
- If the consultant fails to provide a written response or a written response to the absolute satisfaction of QBuild within the stated time, QBuild may cancel the consultant's registration by written notice.
- The remedy of a breach will not constitute grounds for an extension of time or reimbursement of cost incurred by the consultant.

Where QBuild has issued a show cause notice, QBuild may suspend the consultant's registration. Consequently, its eligibility to complete existing contracts, tender for or be awarded new contracts may also be suspended pending resolution of any alleged breach.

All breaches will be recorded on the consultant's file.

- 7.2 Termination of contract.** In cases of proven significant breach or if a contract between a QBuild registered consultant and the State through QBuild is terminated (other than by a mutual agreement), QBuild shall be entitled, by written notice, to cancel the consultant's registration without issuing a notice to show cause.

Please note: Actions under clause 7 are independent of, and in no way limit, the rights of QBuild to take any other action required or provided by specific contracts.

8. Re-registration of consultants

- 8.1 QBuild rights to accept or reject re-registration.** A consultant whose QBuild registration has been cancelled shall not be eligible to apply for re-registration for six (6) months or such other period as QBuild may determine. Any consultant applying for re-registration shall demonstrate to QBuild absolute satisfaction, its fitness for re-registration. QBuild is not obliged to accept an application for re-registration.

9. Working in Indigenous communities

9.1 Queensland’s Aboriginal and Torres Strait Islander communities Queensland’s Aboriginal and Torres Strait Islander communities are culturally unique and QBuild is committed to building respectful and mutually beneficial relationships with them. Legislative provisions and cultural protocols may vary from community to community.

- a. **Alcohol restrictions.** Legislation affecting alcohol consumption in some Aboriginal and Torres Strait Islander communities was passed by the Queensland Parliament to support alcohol reforms. This legislation applies to residents and visitors alike. It is essential that consultants and workers are aware of restrictions affecting alcohol consumption before entering these Aboriginal and Torres Strait Islander communities.

For more information or a list of communities where this applies visit:

<https://www.datsip.qld.gov.au/programs-initiatives/community-alcohol-limits> .

- b. **Indigenous cultural awareness.** It is essential that consultants and workers who are performing QBuild work in Aboriginal and Torres Strait Islander communities attend a local induction with the local council of the Aboriginal and Torres Strait Islander community and adhere to the protocols outlined at the local induction.

QBuild shall identify in tender documentation where nominated Aboriginal and Torres Strait Islander communities require a local induction and the expectations of consultants and workers.

- c. **Conditions of Entry for Visitors.** The Torres Strait Island Regional Council has adopted Subordinate Local Law No. 7 (Indigenous Community Land Management) 2019 which requires all visitors (including consultants and workers) to strictly comply with the Conditions of Entry for Visitors under Local Law No. 7. A Copy of the Law and Visitor Entry Conditions may be viewed at <http://www.tsirc.qld.gov.au/Your Council/Subordinate Local Law No.7 Indigenous Community Land Management 2019.pdf>.

10. Right to Information and disclosure

10.1 *The Right to Information Act 2009 (RTI Act)* provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies.

10.2 The *RTI Act* requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to public interest.

10.3 Information contained in an offer is potentially subject to disclosure to third parties.

10.4 In the assessment of any disclosure required by QBuild pursuant to the *RTI Act*, offerers and consultants accept that any information provided by them, including information marked as confidential, shall be assessed for disclosure in accordance with the terms of the *RTI Act*.

10.5 Where a contract is awarded because of an invitation process, QBuild may publish on the Queensland Government Marketplace website or by any other means, contract information including:

- a. the name and address of QBuild and the consultant
- b. a description of the goods and/or services to be provided under the contract
- c. the date of award of the contract (including the dates of relevant stages if the contract involves more than one stage)
- d. 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 offer
- e. the procurement method used
- f. for contracts with a value over \$10 million, the Contract, or summary information in respect of the contract, between QBuild and the consultant.

10.6 For invitations to the open market, QBuild may publish the names of all offerers and all lump sum tender prices offered.

11. Information Privacy Act

- 11.1** If a consultant collects or has access to personal information in order to carry out work under the contract, the consultant shall:
- a. comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (IPA) in relation to the discharge of its obligations under the contract as if the consultant were an ‘agency’ as defined under IPA.
 - b. not use personal information other than in connection with carrying out work under the contract, unless required or authorised by law
 - c. not disclose, or transfer outside of Australia, personal information without the prior written consent of QBuild, unless required or authorised by law
 - d. ensure that its workers do not access, use or disclose personal information other than in connection with carrying out work under the contract
 - e. ensure that its workers who have access to personal information comply with all obligations under this clause as if it were the consultant
 - f. fully cooperate with QBuild to enable QBuild to respond to applications for access to, or amendment of a document containing an individual’s personal information and to privacy complaints
 - g. comply with such other privacy and security measures as QBuild may reasonably require from time to time.
- 11.2** On request by QBuild, the consultant must obtain from its workers carrying out work under the contract, an executed deed of privacy in a form acceptable to QBuild.
- 11.3** The consultant must immediately notify QBuild on becoming aware of any breach of Clause 11.1.
- 11.4** This clause will survive the termination or expiry of any contract that may arise.
- 11.5** In this clause, ‘personal information’ is information or an opinion, including information or an opinion forming part of a database, whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.

12. Due diligence

- 12.1** QBuild reserves the right to conduct due diligence checks on consultants’ information. QBuild may undertake the due diligence checks itself, or QBuild may engage a third party to undertake these checks on its behalf.
- 12.2** QBuild reserves the right to conduct due diligence checking when evaluating tenders submitted by offerors to QBuild. Offerors submitting tenders may be required to provide additional financial, corporate and past performance information and may be required to nominate referees and accommodate site visits and make presentations. QBuild may undertake the due diligence checks itself, or QBuild may engage a third party to undertake these checks on its behalf. Failure by an offeror to provide any requested information may result in its tender not being further considered. At all times, all parties are required to maintain strict confidentiality of information provided.

13. Confidential information

- 13.1** Documents supplied by QBuild and marked or otherwise identified as confidential shall be regarded as confidential and shall not be disclosed to third parties by the consultant except with prior agreement from QBuild. If requested in writing by QBuild, the consultant shall enter into a confidentiality undertaking, in a form acceptable to or provided by QBuild, acknowledging the consultant’s agreement to not disclose the confidential information even after the completion or termination of the contract.

14. Conflict of interest

- 14.1** Conflict of interest means having an interest which conflicts or may be perceived as conflicting with the ability of the consultant to perform its obligations under an arrangement or contract fairly and objectively. The conflict may arise from a range of factors including personal relationships, other employment and membership of special interest groups or ownership of shares, companies or property.
- 14.2** Consultants must warrant that, to the best of their knowledge, as at the commencement date of any contract or work with QBuild, neither the consultant nor any of its workers, have, or are likely to have a conflict of interest throughout the life of that contract.
- 14.3** If a conflict of interest or risk of conflict of interest arises throughout the duration of the contract (without limitation, including work undertaken by the consultant for any entity other than QBuild) the consultant must immediately give written notice to QBuild.
- 14.4** If QBuild considers that a conflict of interest exists, QBuild may reject an offer or terminate a contract, at its discretion.

15. Queensland Procurement Policy

- 15.1** Should a Consultant be awarded a Contract, the Consultant must, and must ensure its sub-consultants, in carrying out works for QBuild, comply with:
- a. the principles of the *Queensland Procurement Policy (Policy)* and any requirements under Contract in this regard; and
 - b. the *Ethical Supplier Threshold*.
- 15.2** The Consultant acknowledges that a failure to comply with the Principal's policies that apply to the work under Contract or the Consultant's obligations under Contract can result in the imposition of a demerit or sanction under the *Ethical Supplier Mandate*, in addition to any other remedies available to the Principal under Contract and these Conditions.
- 15.3** Failure to comply in any respect with the requirements of the Policy will be considered a significant **breach** of these Conditions and a substantial breach of contract.