

CONDITIONS OF OFFER

For the provision of Goods and/or Services

Version 003 – dated 1 July 2011

Introduction

The Department of Public Works has undertaken a major review of the Queensland Government terms and conditions to incorporate any new legal and legislative requirements on specific issues. This review ensured 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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Queensland Government Chief Procurement Officer
Queensland Government Chief Procurement Office
Department of Public Works
GPO Box 123
Brisbane Qld 4001

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

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CONDITIONS OF OFFER

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Additional Provisions" means the departures from and additions to the Specifications and/or Conditions of Contract and/or any additional terms and conditions that are:

- (a) specified in Section 5 of the Invitation; and/or
- (b) are agreed between the Eligible Customer and Successful Offeror as included in Schedule C to the Conditions of Contract;

"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 Section 1 of the Invitation, by which Offers must be submitted by the Offeror and received by the Eligible Customer;

"Conditions of Contract" means the terms and conditions of the Contract as specified in the Conditions of Contract Version 003 - dated 1 July 2011, which can be located from the Queensland Government Chief Procurement Office website: www.qgcpo.qld.gov.au – under '*Government terms and conditions*', and any Additional Provisions;

"Conditions of Offer" means these terms and conditions and any additional terms and conditions as specified in Sections 1 and 2 of the Invitation, which regulate the pre-contractual relationship between the Parties;

"Confidential Information" means information of, or supplied by, the Eligible Customer that:

- (a) is by its nature confidential;
- (b) is designated as confidential, including the information specified in item 4 of Section 1 of the Invitation; or
- (c) the Offeror or a potential Offeror (including any entity that obtains the information in the Invitation but does not submit an Offer) knows or ought to know is confidential;

and includes information:

- (d) comprised in or relating to any Intellectual Property Rights of the Eligible Customer;
- (e) concerning the internal management and structure, personnel, processes and policies, commercial operations, financial arrangements or affairs of the Eligible Customer;
- (f) that is of actual or potential commercial value to the Eligible Customer; and
- (g) relating to the clients or suppliers of the Eligible Customer;

but does not include information that:

- (h) was already in the possession of the Offeror or potential Offeror and not subject to an obligation of confidentiality, is lawfully received from a third party or independently developed by the Offeror or potential Offeror; or is public knowledge other than through a breach of an obligation of confidentiality;

"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 Eligible Customer as specified in item 3 of Section 1 of the Invitation, to be the sole point of contact for the Invitation Process, or other person nominated from time to time by the Eligible Customer as the Contact Officer;

"Contract" means a legally binding contract as agreed between the Eligible Customer and the Successful Offeror constituted by the Documents specified in clause 1.2.5;

"Deliverables" means the Goods and/or Services to be supplied to the Eligible Customer by the Successful Offeror in accordance with the Contract;

"Delivery Date" means the date specified in Response Form 6.4 – item 6 of Schedule A, in which the Goods will be supplied and/or Services will be performed by the Successful Offeror to the Eligible Customer;

"Delivery Period" means the period specified in Response form 6.4 - item 6 of Schedule A, in which the Goods will be supplied and/or the Services will be performed by the Successful Offeror to the 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;
- (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/or
- (d) a document in electronic form;

- “Eligible Customer”** means the State of Queensland or other entity specified in item 1 of Section 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 Section 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 Legislation”** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related tax imposition law (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 laws;
- “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, whether created before, on or after the Contract commencement date, but excludes Moral Rights;
- “Invitation to Offer”** or **“Invitation”** means the documentation issued by the Eligible Customer, 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 Section 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 an 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 whether existing before, on or after the Contract commencement date;
- “Offer”** means an offer submitted by an Offeror in response to the Invitation, including subsequent modifications;
- “Offeror”** means the entity that submits an Offer and in the case of a joint Offer includes each Offeror;
- “Order”** means an order or any other Document that is:
- (a) substantially in the form of Schedules A, B and C;
 - (b) in another form that is acceptable to the Eligible Customer that includes all of the information required by Schedules A, B and C; or
 - (c) letter of acceptance;
- by which the Eligible Customer accepts the Successful Offeror’s Offer to supply the Goods and/or perform the Services as specified in the Contract;
- “Party”** means each of the Eligible Customer and the Offeror;
- “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;
- “Price”** and **“Pricing”** means the itemised price and/or the price calculated by reference to a schedule of rates payable by an Eligible Customer for a Deliverable, to be specified by the Offeror 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;
- “Response Form”** 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 proposed departures from the Invitation;
- “Schedule”** means the schedules which are part of the Contract;
- “Services”** means the services as specified in the Specifications (if applicable);
- “Specifications”** means the detailed description of the Eligible Customer’s requirements as specified in Section 3 of the Invitation, specifying the nature of the Goods and/or Services for which Offers are sought; and
- “Successful Offeror”** means the entity to be specified in item 2 of Schedule A to the Conditions of Contract, from whom the Goods and/or Services may be procured.

1.2 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 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 reference to a clause, Response Form, attachment or annexure is a reference to a clause, Response Form, 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 reference to a clause is a reference to all of its sub-clauses;
 - (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; and
 - (n) a Schedule forms part of the document to which it is attached.
- 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 Eligible Customer and the Successful Offeror:
- (a) the Order (including Additional Provisions);
 - (b) the Conditions of Contract;
 - (c) Specifications;
 - (d) Successful Offeror's Offer (to the extent accepted under the Order); and
 - (e) any other Document, in whole or in part, forming part of the Contract, as agreed in writing between the Eligible Customer and the 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.

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 and question in the Response Forms and submit these as part of their Offer.
- 2.3 The Offeror must specify in Response Form 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 Eligible Customer.
- 2.5 Despite clause 2.3 and 2.4, any proposed Additional Provisions which purport to take away or reduce the entitlements that would otherwise be provided to the Principal under clause 30.5 will not be considered by the Principal.

- 2.6 Each Offeror must ensure that Response Form font, questions, numbering and headings are not altered in any way unless consent has been granted by the Eligible Customer.
- 2.7 Any Offers that exceed the page limit as specified by the Eligible Customer in Section 4 of the Invitation may be deemed non-conforming.
- 3. OFFER VALIDITY PERIOD**
- 3.1 Offers must remain valid and open until the first to occur of:
- (a) expiry of the minimum period as specified in item 5 of Section 1 of the Invitation after the Closing Date, unless otherwise agreed in writing between the Eligible Customer and the Offeror; or
 - (b) the Eligible Customer advises the Offeror in writing that it has been unsuccessful.
- 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 group of individuals who are acting as trustee – each trustee's full name (including names and surname) and address and, if applicable, full details of the place of practice or business of the trustee and, where the trustees carry on a practice or business in partnership, the full name of the partnership;
 - (iii) a partnership - the full name and address of the individual who is authorised to make the Offer on behalf of the partnership; and
 - (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) the name and company title of the person authorised to make the Offer on behalf of the company; and
 - (v) if the company is acting as a trustee, the full name of the trust;
 - (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 authorised to make the Offer on behalf of the agency;
 - (d) where an Offeror trades under a business name:
 - (i) the registered Business Name (BN);
 - (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 or Offers by 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 (d) 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 Offerors (if applicable).

- 5.2 It is not a requirement under these 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 Eligible Customer with their Offer; or
 - (b) provide evidence of their ABN before any Contract can be entered into with an Eligible Customer.
- 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 perform the 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 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 Invitation Process:
- (a) the Offeror must direct its enquiries to the Contact Officer;
 - (b) the Offeror may only rely on the information or clarification provided in writing, after release of the Invitation, by the Eligible Customer;
 - (c) if, after seeking information or 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 Eligible Customer will not respond to any request for information or clarification from the date specified in item 12 of Section 1 of the Invitation. If no date is specified in item 12 of Section 1 of the Invitation, then this date will default to the Closing Date.
- 7.4 An Offeror will not be entitled to claim compensation or loss from the Eligible Customer for 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 Eligible Customer 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 e-Tendering 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 Eligible Customer accepts no responsibility for Offerors not being aware of any changes to the Invitation.

8. LODGEMENT OF OFFER

- 8.1 If specified in item 6 of Section 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 Eligible Customer at the specified address.
- 8.2 If specified in item 7 of Section 1 of the Invitation that an Offer must be submitted electronically via the Queensland Government e-Tendering 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 7 of Section 1 of the Invitation;
 - (c) may submit multiple attachments to the Offer to this website;
 - (d) must keep the file size of each document below 10MB (10,240KB); 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 is processed a system generated receipt confirmation will 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 Eligible Customer.
- 8.5 The Offeror must ensure that its Offer is received by the Eligible Customer by the Closing Date.
- 8.6 Lodgement of an Offer in the manner specified in the Invitation will constitute an Offer by the Offeror to supply the Goods and/or perform the 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 8 of Section 1 of the Invitation, Offers sent or transmitted to the Eligible Customer by email and/or facsimile will not be considered.
- 8.8 Unless otherwise specified in item 9 of Section 1 of the Invitation, the Eligible Customer 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 Eligible Customer may for any reason and at any stage during the Invitation Process, decline to consider any non-conforming Offers.
- 9.2 The Eligible Customer is not obliged to provide reasons for non-acceptance of any non-conforming Offer.

10. ALTERNATIVE BRANDS

- 10.1 Where any specific brand or model of Goods is stated by the Eligible Customer in the Specifications, the Offeror may submit in Response Form 6.3, other brands or models which, in the opinion of the Offeror are at least equivalent to the brand or model of Goods specified.

11. ALTERNATIVE GOODS AND/OR SERVICES

- 11.1 Offerors may submit, in Response Form 6.3, an:
 - (a) alternative Offer; and/or
 - (b) innovative solution.
- 11.2 The Offeror must include details of the benefits to the Eligible Customer of the alternative Offer and/or innovative solution.

12. CONFIDENTIAL INFORMATION, PRIVACY AND PERSONAL INFORMATION

Confidential Information

- 12.1 The Offeror or any potential Offeror (including an entity which obtains the information in the Invitation but does not submit an Offer), must ensure that it and its officers, employees, agents and/or sub-contractors who are in possession of Confidential Information, keep that information confidential except where disclosure of the Confidential Information is required by law or under the terms of these Conditions of Offer.
- 12.2 If requested by the Eligible Customer, the Offeror or potential Offeror must execute a deed of confidentiality, in a form acceptable to or provided by the Eligible Customer, from itself and from each of its officers, employees, agents and/or sub-contractors who receive the information.
- 12.3 Upon receipt of a written request by the Eligible Customer, the Offeror or any potential Offeror (including an entity who obtains the information in the Invitation but does not submit an Offer), must deliver to the Eligible Customer any Document in the Offeror's or potential Offeror's power, possession or control which contains Confidential Information.

Privacy and Personal Information

- 12.4 If the Offeror collects or has access to Personal Information as a result of the Invitation, the Offeror must:
 - (a) if the Eligible Customer is an "agency" other than the health department within the meaning of the *Information Privacy Act 2009* (Qld), comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under the Invitation, as if the Offeror was the Eligible Customer;
 - (b) if the Eligible Customer is the "health department" within the meaning of the *Information Privacy Act 2009* (Qld), comply with Parts 2 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under the Invitation, as if the Offeror was the Eligible Customer;
 - (c) ensure that the Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;

- (d) not use Personal Information other than for the purposes of submitting an Offer, unless required or authorised by law;
- (e) not disclose Personal Information without the consent of the Eligible Customer, unless required or authorised by law;
- (f) not transfer Personal Information outside of Australia without the consent of the Eligible Customer;
- (g) ensure that access to Personal information is restricted to those of its employees and officers who require access in order to submit an Offer in accordance with the Invitation;
- (h) ensure that its officers and employees do not access, use or disclose Personal Information other than in submitting an Offer in accordance with the Invitation;
- (i) ensure that its sub-contractors and agents who have access to Personal Information comply with obligations the same as those imposed on the Offeror under this clause 12;
- (j) fully co-operate with the Eligible Customer to enable the Eligible Customer to respond to applications for access to, or amendment of, a Document containing an individual's Personal Information and to privacy complaints; and
- (k) comply with such other privacy and security measures as the Eligible Customer reasonably advises the Offeror in writing from time to time.

12.5 The Offeror must immediately notify the Eligible Customer on becoming aware of any breach of clause 12.4.

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, will not be binding on the Eligible Customer.

14. COMPLIANCE WITH LAWS AND OTHER REQUIREMENTS

14.1 All Goods and/or Services offered by the Offeror must comply in all aspects with:

- (a) the terms of the Invitation;
- (b) applicable legislative requirements;
- (c) any applicable Government code, policy or guideline; and
- (d) any current Australian/New Zealand Standard, and where an Australian/New Zealand Standard does not exist, the relevant and current International Standard (ISO).

15. INSURANCES

15.1 In submitting its Offer, the Offeror must provide acceptable evidence of the following insurances to cover its obligations under the Contract, 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 22 of Schedule A, in respect of each claim;
- (c) Professional Indemnity insurance, if specified in Response Form 6.4 – item 23 of Schedule A, for the amount specified in that Response Form in respect of each claim, and which must be maintained by the Successful Offeror for a continuous period of four years after the latter of the Contract completion date or termination of the Contract, unless otherwise specified in Response Form 6.4 – item 23 of Schedule A; and
- (d) any other insurances, as specified in Response Form 6.4 – item 24 of Schedule A.

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 Eligible Customer 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 specify in Response Form 6.4 - item 23 of Schedule A, the name of that Scheme and attach a copy of that Scheme to the Offer.

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); and
 - (c) include the costs of suitable packaging, delivery and installation, unless otherwise specified in the Invitation.
- 16.2 The Offeror must specify in Response Form 6.2:
- (a) any trade, settlement and/or early payment discounts from the Prices offered; and
 - (b) preferred payment methods.
- 16.3 The Eligible Customer 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 a 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 DATE OR DELIVERY PERIOD

- 18.1 The Offeror must state in Response Form 6.4 – item 6 of Schedule A, the Delivery Date or Delivery Period (as applicable), for the Goods and/or Services.

19. OPENING OF OFFERS

- 19.1 Offers will not be opened publicly, unless otherwise specified in item 10 of Section 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 Eligible Customer may cancel or vary the Invitation Process at any time, whether before, on or after the Closing Date for Offers.
- 20.3 An Offeror will not be entitled to claim compensation or loss from the Eligible Customer for any matter arising out of the Invitation Process, including but not limited to any failure by the Eligible Customer to comply with these 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 Eligible Customer may choose to consider, against the Evaluation Process and Criteria.
- 21.2 The Eligible Customer may consider an alternative Offer or an innovative solution offered in response to the Invitation Process, which meets the Specification requirements.
- 21.3 The Eligible Customer 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 Invitation, an Offeror must submit for trial or inspection, within a specified time period nominated by the Eligible Customer, 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 Eligible Customer reserves the right to enter into post-Offer negotiations with one or more Offerors.
- 22.2 The Eligible Customer 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 Eligible Customer may seek further information from the Offeror in writing. Any information provided by or on behalf of the Offeror verbally must promptly be confirmed in writing if so required by the Eligible Customer.
- 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, CONFLICT OF INTEREST AND COLLUSION

- 23.1 The Offeror must not, and must ensure that its officers, employees, agents and/or sub-contractors do not, give or offer anything to the Eligible Customer or any officer or employee of the Eligible Customer, or to a parent, spouse, child or associate of an officer or employee of the Eligible Customer, including any commission, inducement, gift or reward, which could in any way tend or be perceived as attempting to, influence the Eligible Customer's actions in relation to an Offer.
- 23.2 If the Eligible Customer discovers at any time that an Offeror breached clause 23.1, the Eligible Customer may elect, in addition to any other action, not to consider that Offer.
- 23.3 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, employees, agents and/or sub-contractors have, or are likely to have, any Conflict of Interest in any matters connected with the Invitation Process.
- 23.4 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.
- 23.5 In submitting its Offer, the Offeror warrants to the Eligible Customer that, except as expressly disclosed in its Offer:
- (a) the Offer was not prepared with any consultation, communication, contract, arrangement or understanding with any competitor (including any other offeror) regarding:
 - (i) prices;
 - (ii) methods, factors or formulas used to calculate prices;
 - (iii) the intention or decision to submit or not to submit an offer;
 - (iv) the submission of an offer that is non conforming;
 - (v) the quality, quantity, specifications or delivery particulars of goods and/or services (including the Goods and/or Services) to which the Invitation or Offer relates; or
 - (vi) the terms of its Offer or a competitor's offer;
 - (b) it has not (and will not during the Invitation Process):
 - (i) provided any benefit (including money) directly or indirectly to, or entered into any contract, arrangement or understanding to provide any benefit (including money) directly or indirectly to any competitor (including any other offeror) relating in any way to the Invitation or Offer;
 - (ii) received any such benefit directly or indirectly, or entered into any contract, arrangement or understanding to receive any such benefit directly or indirectly from any competitor (including any other offeror) relating in any way to the Invitation or Offer;
 - (iii) consulted, communicated or entered into any contract, arrangement or understanding to provide any benefit (including money), whether directly or indirectly, to a trade, industry or other association (above the published standard fee) relating in any way to the Invitation or Offer; and
 - (c) save as is fully disclosed in its Offer in accordance with clause 23.6, the Offeror and all corporations and persons associated with the Offer, including directors and senior management, are not and have never been subject to proceedings relating to anti-competitive conduct in Australia or overseas.
- 23.6 Full disclosure in the Offer of proceedings relating to anti-competitive conduct in Australia or overseas to which the Offeror and/or any corporation or person associated with the Offer, including directors and senior management, have been subject requires disclosure of at least:
- (a) the names of the parties to the proceedings;
 - (b) the case number;
 - (c) the general nature of the proceedings; and
 - (d) the outcome or current status of the proceedings.
- 23.7 The Eligible Customer reserves the right, at its entire discretion, to exclude the Offeror from the Invitation Process if the Offeror, or any corporation or person, including directors or senior managers associated with the Offer, have ever contravened any anti-competitive laws in Australia (including the *Competition and Consumer Act 2010* (Cth)) or equivalent laws overseas.
- 23.8 Furthermore, the Eligible Customer reserves the right, at its entire discretion, to exclude the Offeror from the Invitation Process if full disclosure of any or all contraventions of the anti-competitive provisions of the *Competition and Consumer Act 2010* (Cth) or equivalent laws in Australia or overseas, has not been made as is required in clauses 23.5(c) and 23.6.
- 23.9 In submitting its Offer, the Offeror acknowledges that if the Eligible Customer accepts the Offer and enters into a Contract, the Eligible Customer will do so in reliance of the warranties in clause 23.5 above.

24. ACCEPTANCE AND/OR REJECTION

- 24.1 The Eligible Customer 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 any part of an Offer;
- (e) accept an Offer that the Eligible Customer considers the best solution, including:
 - (i) a non-conforming Offer;
 - (ii) an alternative Offer; and/or
 - (iii) an innovative solution,
 - in accordance with clauses 9, 10 and 11;
- (f) not accept the lowest Offer; or
- (g) not accept any Offer.

25. SUCCESSFUL OFFEROR

- 25.1 If the Eligible Customer elects to accept an Offer the Eligible Customer will issue an Order to the Successful Offeror and upon its receipt by the Successful 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 is an opportunity to provide a successful or unsuccessful Offeror with information that may assist the Offeror to improve any future offers submitted to the Eligible Customer. 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.
- 27.3 The Eligible Customer will not enter into any correspondence, oral or written, about its selection decisions.

28. NO ADVERTISEMENT

- 28.1 The Successful Offeror must not, and must ensure that its officers, employees, agents and/or sub-contractors do not make any public announcement or advertisement in any medium in relation to the Invitation Process without the consent of the Eligible Customer.

29. GOVERNING LAW

- 29.1 Subject to clause 20.1, any Offer submitted in response to the Invitation will 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. RIGHT TO INFORMATION AND DISCLOSURE

- 30.1 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.
- 30.2 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.
- 30.3 Information contained in an Offer is potentially subject to disclosure to third parties.
- 30.4 If disclosure under the RTI Act, and/or general disclosure of its Offer, in whole or in part, would be of concern to an Offeror, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, this should be indicated in Response Form 6.1. The Eligible Customer 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.
- 30.5 Despite any other provision of the Invitation and/or Invitation Process, the Eligible Customer is entitled to publish on the Queensland Government Chief Procurement Office website: www.qgcpo.qld.gov.au under '*eTendering website for Government Suppliers*' or by any other means, the following details:
- (a) the name and address of the Eligible Customer;
 - (b) a description of the Goods and/or Services;

- (c) Contract commencement date or award date;
 - (d) value of the Contract;
 - (e) name and address of the Successful Offeror;
 - (f) procurement method used; and
 - (g) where the total value of the Goods and/or Services is \$10 million or more, the Customer is entitled to publish the following additional information:
 - (i) Invitation details;
 - (ii) Contract overview; and
 - (iii) reasons for non-disclosure of procurement results (if applicable).
- 30.6 Any proposed variations by the Offeror to clause 30.5 which purport to take away or reduce the entitlements that would otherwise be provided to the Eligible Customer under that clause will be null and void.
- 30.7 For more information regarding the RTI Act, please contact the RTI Officer as specified in item 11 of Section 1 of the Invitation.