

**MAJOR CONDITIONS OF  
OFFER**

**VERSION SEPTEMBER 2023**

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### 1. Definitions

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

**Addendum** means a document or information added to the Invitation to Offer to clarify, modify, or support the information in the original Invitation to Offer document.

**Alternative Offer** means an Offer that materially and substantially alters, qualifies, amends or departs from the Principal's Requirements.

**Approved Communication Method** means the process for giving notices, consents and communications pursuant to the proposed Conditions of Contract (including, without limitation, any timeframes for determining when a notice, consent or communication is deemed given and received).

**Business Day** means between 8am and 5pm Queensland time on a day other than a Saturday, Sunday or public holiday at the Principal's address.

**Closing Date** means the time and date specified in the Invitation to Offer: Details by which Offers must be submitted by the Tenderer and received by the Principal.

**Conditions of Contract** means the terms and conditions of the Contract as specified in the Invitation to Offer: Conditions of Contract, copies of which can be located on the City of Gold Coast website, [cityofgoldcoast.com.au](http://cityofgoldcoast.com.au) and any agreed Deviations.

**Conditions of Offer** means these terms and conditions and any additional terms and conditions as specified in the Invitation to Offer: Conditions of Offer, which regulate the pre-contractual relationship between the Parties.

**Confidential information** means all information of, or supplied by the Principal that:

- is by its nature confidential;
- is specified as confidential, including the information specified in the Invitation to Offer: Details;
- the Tenderer or a potential Tenderer (including any entity that obtains the information in the Invitation to Offer but does not submit an Offer) knows or ought to know is confidential, and includes information:
  - comprised in or relating to any Intellectual Property Rights of the Principal;

- concerning the internal management and structure, personnel, processes and policies, commercial operations, financial arrangement or affairs of the Principal;
- that is of actual or potential commercial value to the Principal; and
- relating to the clients or suppliers of the Principal,

but does not include information that:

- was already in the possession of the Tenderer or potential Tenderer and not subject to an obligation of confidentiality;
- is lawfully received from a third party or independently developed by the Tenderer or potential Tenderer; 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 Tenderer to submit an Offer fairly and objectively. This includes where any officers or employees of the Tenderer or any of its subcontractors are, or within the last 3 years, have been officers or employees of the Principal.

**Conforming Offer** means an Offer that:

- conforms with the Invitation to Offer and with all applicable Legislative Requirements;
- strictly complies with any Mandatory Criteria; and
- contains no Deviations (whether to the Contract, the Principal's Requirements or otherwise).

**Consent** means prior written consent.

**Contact Officer** means the person nominated by the Principal as specified in the Invitation to Offer: Details, to be the sole point of contact for the Invitation to Offer process, or other person nominated from time to time, in writing, by the Principal as the Contact Officer.

**Contract** means a legally binding contract as agreed between the Principal and the Successful Tenderer constituted by the documents specified in Clause 2.5.

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**Corrective Action** includes any one or more of the following:

- terminating the Invitation Process and delaying or cancelling its plans for the procurement of the Supply;
- terminating the Invitation Process and commencing a new invitation process for the Supply;
- if applicable, bringing an action for breach of the Conditions of Offer;
- rejecting one or more Tenderer's Offers;
- not permitting the Tenderer to submit any Offer or otherwise participate in the Invitation Process;
- issuing a warning to relevant persons; or
- requesting one or more Tenderers to take certain action, failing which the Principal may take any of the above actions,

according to the significance of the relevant event to which the Principal is responding, as assessed by the Principal in its sole and unfettered discretion (and includes, in the Principal's sole and unfettered discretion, a decision not to take any action).

**Deviation** means the proposed deviations to the Principal's Requirements and/or Conditions of Contract and/or any additional terms and conditions that are described in Clause 13 and set out in Response Form: Deviations.

**document** includes a document in any media or format.

**Evaluation Criteria** means the criteria which are used to evaluate the compliance and/or relative ranking of Offers.

**Evaluation Process** means the evaluation process and criteria for Offers as specified in the Invitation to Offer: Offer Evaluation Process.

**Government Agency** means:

- a government or government department or other body;
- a governmental, semi-governmental or judicial person; or
- a person (whether autonomous or not) who is charged with the administration of Legislative Requirements.

**GST** means a Goods and Services tax imposed by or through the GST legislation *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Information for Convenience** means:

- the documents and information set out or referenced in the Conditions of Offer, Invitation to Offer and all other Offer documents; and

- any other information communicated (by any means) by or on behalf of the Principal to the Tenderer, whether before, during or after these Conditions of Offer, that relates to the Conditions of Offer, the procurement process, or the Contract,

except the documents and information that are intended to constitute the Contract (as defined in the Contract Header).

**Insolvency Event** means any of the following events:

- the Tenderer informs the other party in writing or creditors generally that the Tenderer is insolvent or it is financially unable to proceed with the Contract;
- execution is levied against the Tenderer by a creditor;
- the Tenderer, being an individual person, or a partnership including an individual person, and that person:
  - commits an act of bankruptcy;
  - has a bankruptcy petition presented against it;
  - presents a debtor's petition or a declaration of an intention to present a debtor's petition to the official receiver;
  - is made bankrupt;
  - under Part IX of the *Bankruptcy Act 1966* (Cth):
    - makes a written proposal for a debt agreement; and
    - the proposal becomes a debt agreement; or
    - makes a proposal for a deed of assignment, deed of arrangement or a composition; or
  - under Part X of the *Bankruptcy Act 1966* (Cth):
    - has a deed of assignment or deed of arrangement made;
    - accepts a composition;
    - is required to present a debtor's petition; or
    - has a sequestration order made; or
- the Tenderer is a corporation and:
  - a notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
  - the Tenderer enters a deed of company arrangement with creditors;
  - a controller or administrator is appointed;
  - a meeting of creditors is called with a view to:
  - entering a scheme of arrangement or composition with creditors; or

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- appointing a controller or administrator to the party;
- a receiver of the property or part of the property of the Tenderer is appointed;
- the Tenderer takes or commences or has taken, commenced or instituted against it any process, action or proceeding, whether voluntary or compulsory, which has an object or may result in the winding up of the company, other than a voluntary winding up by members for the purpose of reconstruction or amalgamation, or a controller or administrator is appointed or enters into a compromise or other arrangement with its creditors or a receiver or receiver and manager is appointed to carry on the Tenderer's business for the benefit of the creditors or any of them;
- a winding up order is made;
- execution is levied by creditors, debenture holders or trustees or under a floating charge; or
- any event analogous to any of the above events occurs.

**Intellectual Property Rights** means any patent, design (whether registered or not), trademark or name, copyright or other protected right.

**Invitation to Offer** means the documentation issued by the Principal, as specified in Clause 2.4, inviting Offers for the carrying out of the Supply.

**Invitation Process** means the process of inviting Offers for the carrying out of the Supply, the Tenderer's preparation and submission of an Offer, communication between the Parties in relation to the Invitation to Offer and/or Offer, Evaluation Process and the subsequent acceptance or rejection of Offers.

**in writing** means either by letter or email.

**Legislative Requirements** means:

- Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and Queensland;
- certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Supply;
- without limiting the foregoing, any condition of accreditation (whether present or future) imposed by the Federal Safety Commissioner pursuant to section 16 of the Fair Work (Building Industry – Accreditation Scheme) Regulation 2016 (Cth) notified to the Tenderer from time to time; and

- fees and charges payable in connection with the foregoing.

**Local Business** means a business with its head office on the Gold Coast and conducts business within the Gold Coast City boundaries prior to an offer being submitted, or has a branch office on the Gold Coast, or is a member of a Gold Coast Chamber of Commerce as defined in the Principal's Procurement Policy and Contract Manual and in the Invitation to Offer: Offer Evaluation Process. Information on the 'Buy local, hire local and grow local' procurement policy, can be located on the City of Gold Coast website: [cityofgoldcoast.com.au](http://cityofgoldcoast.com.au).

**Mandatory Criteria** means criteria that an Offer must meet to be eligible for further consideration in the Evaluation Process. These include conditions for participation where relevant.

**Negotiate in Good Faith** means:

- to make proposals and (if thought appropriate) counterproposals for terms of the Contract and the Principal's Requirements (including any drawings);
- to make such proposals and counterproposals which respect and give effect to the material terms already agreed, and which address other matters relating to the Principal and the Tenderer's respective positions as potential Principal and contractor;
- to give serious and genuine consideration to proposals and counterproposals made and received;
- to make and respond to proposals and counterproposals within timeframes given by the Principal (if applicable), or if no timeframes are given by the Principal, as soon as reasonably practicable having regard to the time allotted for negotiations and to the nature and scope of the issues to be negotiated, their technical and factual complexity, and their commercial significance to the parties; and
- to negotiate with honesty of purpose and sincerity of declaration.

**Non-Conforming Offer** means an Offer that is not a Conforming Offer and includes an Alternative Offer.

**Offer** means an Offer submitted by a Tenderer in response to the Invitation to Offer.

**Offer briefing/site inspection** means an information session that may be held as part of the Invitation to Offer process as specified in the Invitation to Offer: Details.

**Party** means each of the Principal and the Tenderer.

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**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 reasonable be ascertained, from the information or opinion.

**Price and Approved Expenses** means the itemised price and/or the price specified (contract sum) in Response Form: Price Submission and the Contract Header:

- **'Firm'** - that is the Price does not change during the term of the Contract;
- **'Fixed'** - that is the Price is firm in time and is subject to fluctuations only in changed economic circumstances and must be specified in Response Form: Pricing Structure, Discounts and Rebates.

**Principal** means the Gold Coast Council ABN 84 858 548 460.

**Principal's Requirements** means the detailed description of the Principal's requirements as specified in the Invitation to Offer: Principal's Requirements, specifying the nature of the Supply for which Offers are sought. The Principal's Requirements will form the basis of the Contract.

**Response Forms** means the forms contained within the Invitation to Offer: Response Forms which the Tenderer must complete and submit as part of their Offer, which sets out certain required information and identifies the Tenderer's proposed Deviations.

**RTI Act** means *Right to Information Act 2009* (Qld).

**Special Losses** includes the following, whether they are direct, indirect, consequential or otherwise:

- costs of capital;
- loss of use, production, profit, revenue, data, opportunity or contract;
- loss of reputation or goodwill;
- increased operating costs;
- penalties or fines; or
- any other economic loss.

**Successful Tenderer** means the entity to be specified in the Contract Header, who upon acceptance by the Principal will be called the Contractor from whom the Supply may be procured.

**Supply** means the goods, services and works, as applicable, that are being procured pursuant to the Invitation to Offer, as described in the Principal's Requirements.

**Tenderer** means the entity that submits an Offer

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### 2. Interpretation

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- 2.1 In the Conditions of Offer the clause headings have been inserted for ease of reference only and are not intended to affect the meaning or interpretation of the Conditions of Offer.
- 2.2 The following rules apply in interpreting the Conditions of Offer, except where the context makes it clear that a rule is not intended to apply:
- words importing a gender include the other gender;
  - words in the singular include the plural and vice versa;
  - all dollar amounts refer to Australian currency;
  - a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
  - a reference to an entity or person includes an individual, corporation, partnership or other legal entity;
  - a party includes its executors, administrators, liquidators, successors and permitted assigns;
  - a reference to a clause is a reference to a clause to the Conditions of Offer;
  - a reference to a Response Form, attachment or annexure is a reference to a Response Form, attachment or annexure to the Invitation to Offer;
  - if a day on which an act is to be done is not a Business Day 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;
  - if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;
  - a reference to a clause is a reference to all of its sub-clauses; and
  - 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.
- 2.3 If the Tenderer comprises two or more persons:
- an obligation of those persons under the Conditions of Offer is joint and several, and each of those persons agrees that it is responsible for the acts or omissions of the other as if they were its own;
  - a right of those persons benefits them jointly; and
  - any right those persons exercise under the Conditions of Offer will be deemed to have been exercised concurrently by all persons constituting the Tenderer.
- 2.4 The Invitation to Offer comprises the following documents:
- Invitation to Offer: Details herein referred to as Section 1;
  - Conditions of Offer herein referred to as Section 2;
  - Offer Evaluation Process herein referred to as Section 3;
  - Principal's Requirements herein referred to as Section 4;
  - Conditions of Contract herein referred to as Section 5; and
  - Response Forms herein referred to as Response Forms.
- 2.5 The following documents will constitute the entire Contract between the Principal and the Successful Tenderer:
- the Contract Header (including agreed Deviations);
  - the Conditions of Contract;
  - the Principal's Requirements; and
  - any other document, in whole or in part, forming part of the Contract, as set out in the Contract Header.
- 2.6 In the event of any conflict between the documents specified in the sub-clause above, the order of precedence to resolve the conflict will be set out in the Contract Header.

### 3. Compliance with the Invitation to Offer

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- 3.1 Each Tenderer must ensure that its Offer complies with the terms and conditions contained within the Invitation to Offer.



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- 3.2 Each Tenderer must respond to every requirement and question in the Response Forms and submit these as part of their Offer.
- 3.3 The Tenderers must, if the Invitation to Offer: Details provides that the Principal will consider Deviations, specify in the Response Forms: Deviations any proposed Deviations to the Conditions of Contract and the Principal's Requirements which will form part of its Offer.
- 3.4 Any proposed Deviations which are not specified in Response Forms: Deviations will not form part of the Offer and will not be considered by the Principal.
- 3.5 Each Tenderer must ensure that fonts, questions, numbering and headings of each Response Form is not altered in any way, unless Consent has been granted by the Principal.
- 3.6 Any Offers that exceed the page limit as specified by the Principal in the Invitation to Offer: Details will result in the Tenderer's Offer being deemed a Non-Conforming Offer.

## 4. Offer Validity Period

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- 4.1 Offers must remain valid and open until the earlier of:
  - the expiry of the minimum period as specified in the Invitation to Offer: Details (**Offer Validity Period**); or
  - the Principal advises the Tenderer in writing that it has been unsuccessful.
- 4.2 The Principal may at any time, by sending an Addendum, request the Tenderer's consent via email to an extension to the Offer Validity Period which consent must not be unreasonably withheld or delayed. If the Tenderer does not agree to the extension as requested, the Principal may reject the Tenderer's Offer.

## 5. Format of Offer

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- 5.1 Each Tenderer must ensure that:
  - they complete in full the Response Forms;
  - their Offer bears the name of the Tenderer on all of the Response Forms; and
  - their Offer is executed in a manner so as to bind the Tenderer (or, in the case of joint Offers, each Tenderer), if accepted at the sole and unfettered discretion of the Principal.

## 6. Essential information

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- 6.1 The Tenderer must include in the Contract Header the following Tenderer authorisation, certification and execution:
  - in the case of an Offer by an individual, the Tenderer's full name (including given names and surname) and address;
  - in the case of an Offer by 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;
  - in the case of an Offer by a partnership, the full name and address of the individual who is authorised to make the Offer on behalf of the partnership;
  - in the case of an Offer by a company:
    - full name of the company;
    - address of the registered office of the company;
    - the Australian Company Number (ACN);
    - the name and title of the person authorised to make the Offer on behalf of the company; and
    - if the company is acting as a trustee, the full name of the trust;
  - in the case of an Offer by a public sector agency:

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- the full name and address of the agency; and
- the name and title of the person authorised to make the Offer on behalf of the agency;
- where the Tenderer trades under a business name:
  - the registered business name;
  - address of every proprietor trading under that business name; and
  - the address of the principal place of business, and

subject to the clause below, the active Australian Business Number (ABN) of the Tenderers (if applicable).

- 6.2 It is not a requirement under the Conditions of Offer that Tenderers possess an active Australian Business Number (ABN) at the time of submitting an Offer. However, Tenderers that do not quote an ABN when submitting an Offer will be required to:
- submit a 'Statement by a Supplier – Reason for not quoting an Australian Business Number (ABN) to an enterprise' form to the Principal with their Offer; and
  - provide evidence of their ABN before any Contract can be entered into with the Principal.
- 6.3 Tenderers should seek advice from the Australian Tax Office as to their eligibility to sign the 'Statement by a Supplier - Reason for not quoting an Australian Business Number (ABN) to an enterprise' form.

## 7. Language

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- 7.1 Each Offer must be submitted in English.

## 8. Tenderer's responsibilities

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- 8.1 It is the responsibility of each Tenderer to:
- read and familiarise themselves with the contents of the Invitation to Offer;
  - satisfy themselves as to local conditions and facilities that may impact on the Tenderer's ability to offer or to carry out the Supply or comply with other specified requirements;
  - obtained and examined all information relevant to the risks, contingencies and other circumstances having an effect on the Invitation to Offer;
  - carry out their own investigation as to the feasibility of their Offer and to rely on that investigation; and
  - not rely on information provided by the Principal without independently verifying such information and independently satisfying itself to the adequacy, accuracy and correctness of the information.
- 8.2 Any party expending money, making commitments or incurring liabilities on the basis of responding to the Invitation to Offer, or in relation to any matter contained in the Invitation to Offer, does so at their own risk and expense.
- 8.3 Where a Tenderer will, or intends to require access to land or places made available by the Principal for the purpose of carrying out the Supply, the Tenderer is to visit such land or places and satisfy itself in respect of the local conditions and facilities. The Principal will not be liable for any claim on the grounds of insufficient or incomplete information.
- 8.4 Except to the extent that the Invitation to Offer expressly allows to the contrary, or the Contact Officer expressly permits otherwise, all correspondence and notices between the Principal and the Tenderer relating to the Information for Convenience, the Invitation Process or the Conditions of Offer must be communicated:
- via the Contact Officer;
  - in accordance with the Approved Communication Method; and
  - in respect of correspondence from the Tenderer by the time and date specified in the Invitation to Offer: Details.
- 8.5 The Contact Officer may exercise any right or perform any obligation of the Principal under the Invitation to Offer.

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- 8.6 Without limiting any other provision of the Conditions of Offer, the Principal will not be bound by any information other than that which is communicated in accordance with Clause 8.4.
- 8.7 The Tenderer must:
- ensure that the Contact Officer has the current contact details of the Tenderer;
  - ensure that the Tenderer is capable of promptly receiving all communications from the Contact Officer via the Approved Communication Method; and
  - if the Approved Communication Method is email, ensure that the email address it has nominated to the Contact Officer is capable of receiving communications of any size.
- 8.8 Subject to Clause 8.9, any correspondence submitted by a Tenderer to the Contact Officer is submitted on the basis that the Principal may circulate it, and the Principal's response, to any one or more of the Tenderers in the form of an Addendum, provided that the identity of the Tenderer is not communicated.
- 8.9 If a Tenderer expressly and genuinely states in writing that certain parts of its correspondence to the Contact Officer are confidential, then the Principal must, in its sole and unfettered discretion:
- either keep those parts confidential from other Tenderers; or
  - notify the Tenderer that it disagrees that they are confidential, and the Tenderer must either:
    - withdraw its correspondence, without receiving its desired response from the Principal; or
    - notify the Principal that it agrees to the disclosure of the correspondence to other Tenderers.
- 8.10 The Principal reserves the right to not respond to any correspondence it receives from a Tenderer.
- 8.11 A Tenderer will not be entitled to claim compensation or loss from the Principal for any losses, damages or expenses, or an extension of time to the Closing Date, on the grounds that insufficient or ambiguous information was provided in the Invitation to Offer.
- 8.12 The Principal reserves the right to change any part of the Invitation to Offer prior to the Closing Date. It is the responsibility of each Tenderer to regularly check the Principal's e-tendering website nominated in the Invitation to Offer: Details, for any changes to the Invitation to Offer prior to the Closing Date. The Principal accepts no responsibility for Tenderers not being aware of any changes to the Invitation to Offer.

## 9. Treatment of Offer documents

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- 9.1 The Invitation to Offer:
- at all times remains the property of the Principal;
  - must only be used for the purpose of preparing an Offer; and
  - must be read and construed together, and are intended to be mutually explanatory of each other.
- 9.2 As between the Principal and the Tenderer, all Intellectual Property Rights in the Information for Convenience are the property of the Principal.
- 9.3 Immediately after the Tenderer:
- determines not to submit an Offer;
  - receives advice that its Offer has not been successful; or
  - being requested to do so by the Principal,
- it must either return to the Principal in good condition, or destroy (as requested by the Principal), the Information for Convenience and all copies of them that it or its personnel hold.
- 9.4 The Tenderer must keep confidential, and not use for any purpose other than participating in this Invitation Process and performing its obligations under the Conditions of Offer, any Confidential Information of the Principal, except for the following disclosures:
- to its personnel to the extent necessary to participate in the Invitation Process;
  - to its professional advisors who are under a duty of confidentiality owed to the Tenderer; or
  - with the Principal's prior written permission, which may be given subject to reasonable conditions, and the Tenderer agrees to comply with those conditions.

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- 9.5 If Confidential Information is disclosed in accordance with Clause 9.4, the Tenderer must ensure that the person agrees to keep the information confidential, and if requested by the Principal, have that person execute a legally binding agreement to keep the information confidential.
- 9.6 The Tenderer must indemnify, as debt due and payable, the Principal from and against all expenses (including legal fees on an indemnity basis and expert's fees), damages and losses (including Special Losses) suffered or incurred by the Principal in relation to the Tenderer's breach of Clause 9.
- 9.7 The Tenderer must notify the Contact Officer in accordance with Clause 8.4 if it:
- identifies any error, ambiguity, omission or inconsistency within or between the Information for Convenience;
  - identifies any conflict between something in the Information for Convenience and any Legislative Requirements; or
  - does not understand something in the Information for Convenience.
- 9.8 Any item or requirement that is necessary to:
- the completion of the Supply; or
  - the compliance of the Supply with any Legislative Requirements,
  - but which is omitted from the Invitation to Offer, is deemed to be included within other items in the Principal's Requirements even if not stated.

## 10. Lodgement of Offer

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- 10.1 The Offer must only be submitted electronically and as specified in the Invitation to Offer: Details.
- 10.2 Lodgement of an Offer in the manner specified in the Invitation to Offer will constitute an Offer by the Tenderer on the terms of the Invitation to Offer, subject to agreement of any proposed Deviations specified in Response Forms: Deviations. All Offers become the property of the Principal and will not be returned to the Tenderer.
- 10.3 The Principal may retain all documents and any sample (if applicable) submitted in response to the Invitation to Offer.
- 10.4 Tenderers must ensure that Offers are authorised by the Tenderer's duly authorised officer, and that the duly authorised officer is clearly identified in the Contract Header.

## 11. Status of Offer

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- 11.1 By submitting its Offer, the Tenderer acknowledges that the Principal is relying on all of the information contained, and all of the representations made, in its Offer and any subsequent clarifications, whether written, verbal or both, of that Offer for the purposes of evaluating an Offer against Offers received from other Tenderers and ultimately deciding whether, and if so with whom, to enter into the Contract.
- 11.2 If the Tenderer submits a Conforming Offer, it will be deemed to have made an unconditional offer to enter into the Contract, which may be accepted by the Principal in accordance with Clause 36.
- 11.3 The Principal is not obliged to provide reasons for non-acceptance of any Non-Conforming Offer.
- 11.4 The Principal may:
- refuse to consider a Non-Conforming Offer; or
  - commence to consider it, and to do all of the things described in Clause 11, but subsequently cease to consider it.
- 11.5 The Tenderer must:
- submit a Conforming Offer if it wishes to submit an Alternative Offer;
  - clearly identify in its Alternative Offer the areas in which the Offer departs from or qualifies the Principal's Requirements, and should give brief reasons of what advantages its Alternative Offer offers in comparison to its Conforming Offer; and
  - ensure that its Alternative Offer is, in all other respects, a Conforming Offer.

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- 11.6 If the Tenderer submits an Alternative Offer, then it will be deemed to have made an unconditional offer to enter into the Contract that may be accepted by the Principal in accordance with Clause 36.
- 11.7 The Principal may:
- refuse to consider an Alternative Offer; or
  - commence to consider it, and to do all of the things described in Clause 11, but subsequently cease to consider it.

## 12. Alternative brands

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- 12.1 Where any specific brand or model of goods is stated by the Principal in the Principal's Requirements, the Tenderer may, subject to Clause 13, submit in Response Forms: Deviations, other brands or models which, in the opinion of the Tenderer are at least equivalent to the brand or model of goods specified. When submitting alternative brands, the Tenderer must submit sufficient information to permit evaluation of the proposed alternatives including evidence that the performance is equal to or greater than that specified.
- 12.2 Acceptance of alternative brands will be at the sole and unfettered discretion of the Principal.

## 13. Deviations

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- 13.1 A Tenderer may only submit Deviations if the Invitation to Offer: Details: Deviations provides that the Principal will consider Deviations.
- 13.2 Tenderers must provide sufficient information to permit evaluation of the proposed Deviations including detailed reasons why the Deviation is sought by the Tenderer and the Tenderer's alternative drafting (if applicable).
- 13.3 If the Invitation to Offer: Details: Deviations provides that:
- the Principal will consider Deviations, and the Tenderer submits any Deviations, the Tenderer's Offer will be deemed a Non-Conforming Offer;
  - the Principal will not consider Deviations, and the Tenderer nevertheless submits any Deviations, the Tenderer's Offer will be deemed a Non-Conforming Offer; and
  - the Principal will only consider Deviations with the submission of a Conforming Offer, and the Tenderer submits any Deviations without also submitting Conforming Offer, the Tenderer's Offer will be deemed a Non-Conforming Offer.
- 13.4 Acceptance of a Deviation will be at the sole and unfettered discretion of the Principal, as agreed between the Principal and Successful Tenderer in writing.

## 14. Offer in parts

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- 14.1 A Tenderer may submit an Offer in part(s) where expressly stated in the Invitation to Offer: Details. If the submission of an Offer in part(s) is permitted, the Offer must clearly state which part(s) are included in the Offer.
- 14.2 Unless the Invitation to Offer: Details otherwise states, an Offer for all of or any part of a proposed Contract will be construed as an Offer for each individual part for which a separate price or rate is identifiable. The Principal may enter into one or more Contract(s) with Tenderers for part(s) of the Supply and the tendered rates or prices will apply.

## 15. Prices offered

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- 15.1 Prices specified in the Offer should (where applicable):
- be in Australian currency;
  - indicate GST exclusive amount, GST component and GST inclusive amount where requested, any other government taxes or duty; and

## Major Conditions of Offer

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- include all relevant costs specified in the Invitation to Offer: Specifications and Response Forms: Price Submission.
- 15.2 The Tenderer must specify (where applicable) in Response Forms: Pricing Structure, Discounts and Rebates.
- any factors affecting the Price and Approved Expenses offered;
  - any trade, settlement and/or early payment discounts from the Prices offered; and
  - preferred payment methods.
- 15.3 Acceptance of this clause will be at the sole and unfettered discretion of the Principal.
- 15.4 The Principal reserves the right not to accept an Offer which requires payment in advance of the carrying out of the Supply.

## 16. Confidential information

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- 16.1 The Tenderer or any potential Tenderer (including an entity which obtains the information in the Invitation to Offer but does not submit an Offer), must ensure that it and its officers, employees, agents and/or subcontractors 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 the Conditions of Offer.
- 16.2 If requested by the Principal, the Tenderer or potential Tenderer must complete Response Form: Conflict of Interest Declaration and Confidentiality Agreement, from itself and from each of its officers, employees, agents and/or subcontractors who receive Confidential Information.
- 16.3 Upon receipt of a written request by the Principal, the Tenderer or any potential Tenderer (including an entity who obtains the information in the Invitation to Offer but does not submit an Offer), must deliver to the Principal any document in the Tenderer's or potential Tenderer's power, possession or control which contains Confidential Information.

## 17. Principal's handling and assessment of Offer

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- 17.1 Subject to the Invitation to Offer, the Principal must keep confidential all contents of the Offer that are not publicly available, except for the following disclosures:
- to its professional advisors, provided that they undertake to keep it confidential;
  - to its personnel for the purposes of the Evaluation Process;
  - with the Tenderer's prior written permission, which may be given subject to reasonable conditions;
  - for purposes of exercising its rights and discharging its obligations under the Invitation to Offer (including to carry out any procurement process); or
  - to comply with any Legislative Requirements, or policy to which it is subject (including its own policies), or to exercise or discharge its rights, powers, duties or functions as a local government.
- 17.2 The Tenderer must:
- give any additional information that is reasonably requested by the Principal regarding its Offer, and in the form and manner requested, which may include presentations to, or interviews by, the Principal's personnel;
  - be represented at any meeting of the kind referred to the paragraph above by any of the Tenderer's personnel reasonably requested by the Principal, and in any case by personnel who are conversant with details of the Offer relevant to the subject matter of the meeting, who are able to indicate the relative values of any items under discussion; and
  - if the Tenderer is:
    - part of an incorporated or unincorporated joint venture, notify the Principal of that fact, and give a copy of all relevant agreements to the Principal; or
    - a trustee of a trust, notify the Principal of that fact and give a copy of all trust agreements, deeds and other documents to the Principal.
- 17.3 The Principal may itself or through its agents:

## Major Conditions of Offer

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- perform security, probity, financial and other due diligence enquiries of the Tenderer's Offer, the Tenderer, and any third parties that the Tenderer proposes to engage to carry out any part of the Supply; and
- without limiting the paragraph above, contact the Tenderer's referees and conduct discussions with, and visits to, customers of a Tenderer and subcontractors (whether or not listed as referees in the Tenderer's Offer),

and the Tenderer must provide reasonable assistance, and ensure its personnel do likewise, in regards to all such enquiries, discussions and visits.

- 17.4 The Principal may engage in discussions with the goal of maximising the benefits of an Offer. As part of this process, the Tenderer may be asked to improve the content of its Offer, including the technical, financial, corporate or legal risk allocation. To the extent that the Principal enters into discussions regarding the terms of the Contract, the Principal's Requirements, and any Deviations in the Tenderer's Offer, the Tenderer must Negotiate in Good Faith.
- 17.5 Notwithstanding the possibility of discussions, the Principal's preference is to select a Successful Tenderer on the basis of Offers submitted (assuming that they sufficiently meet the Principal's Requirements) rather than on the basis of further discussions. Accordingly, the Tenderer is encouraged to submit its most attractive offer in its Offer and to not assume that there will be any further discussions with the Principal.

## 18. Privacy and personal information

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- 18.1 The Tenderer is to comply with the Information Privacy Act 2009 (Qld).
- 18.2 If the Tenderer collects or has access to Personal Information as a result of the Invitation to Offer, the Tenderer must:
- ensure that the Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
  - not use Personal Information other than for the purposes of submitting an Offer, unless required or authorised by law;
  - not disclose Personal Information without the Consent of the Principal, unless required or authorised by law;
  - 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 to Offer;
  - 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 to Offer;
  - ensure that its subcontractors and agents who have access to Personal Information comply with obligations as imposed on the Tenderer under this clause;
  - fully cooperate with the Principal to enable the Principal to respond to applications for access to or amendment of, a document containing an individual's Personal Information and to privacy complaints; and
  - comply with such other privacy and security measures as the Principal reasonably advises the Tenderer in writing from time to time.
- 18.3 By submitting an Offer, the Tenderer warrants that it has obtained the consent of each individual whose Personal Information is included in its Offer for the:
- inclusion of their Personal Information in the Offer;
  - use of the Personal Information by the Principal for the purpose of the Invitation Process; and
  - disclosure of the Personal Information to other parties (including professional advisors) as may be involved in assisting the Principal with the Invitation Process.
- 18.4 The Tenderer must indemnify the Principal against any claim, damage or loss (including legal costs and expenses on an indemnity basis and Special Loss) that the Principal may suffer or incur as a consequence of a breach by the Tenderer of the warranty in Clause 18.3
- 18.5 The Tenderer must immediately notify the Principal on becoming aware of any breach of this clause.

## Major Conditions of Offer

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18.6 This clause survives the expiry or termination (for any reason) of the Invitation to Offer.

## 19. Disclosure under the Local Government Act

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19.1 The Tenderer acknowledges that:

- it has read section 237 of the Local Government Regulation 2012 (Qld); and
- if section 237 of the Local Government Regulation 2012 (Qld) applies to the Contract, the Principal will be required to disclose the information required by that section concerning the Contract.

## 20. Principal's limitations of liability

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20.1 Subject to Clause 20.2, the Tenderer accepts all risk and cost in relation to it and its personnel's participation in any aspect of the Invitation Process (including the performance of all obligations under the Conditions of Offer), or other process derived from the Invitation to Offer.

20.2 To the maximum extent permitted by law, the maximum aggregate liability of the Principal to the Tenderer for any breach of the Conditions of Offer or any other act, default or omission of the Principal or its personnel (including negligence, breach of any statute or any other duty or obligation in equity or at law), irrespective of how serious the breach or how important the term that is breached, is limited to \$10. This clause survives the expiry or termination (for any reason) of the Invitation to Offer.

20.3 Except to the extent expressly stated in the Conditions of Contract, the Tenderer agrees that:

- the Principal and its personnel do not warrant, guarantee or make any representation (express or implied), or assume any duty of care, or accept any liability, with respect to the completeness, accuracy, adequacy, suitability or correctness of any Information for Convenience;
- there may be other information relevant to the Conditions of Offer, the Invitation Process or the Contract in the knowledge or possession of the Principal or its personnel that has not been provided to the Tenderer;
- to the extent that the Principal is not the author or source of any Information for Convenience that has been provided to the Tenderer or its personnel, the Principal is only the conduit of that Information for Convenience and does not adopt its contents; and
- the Invitation Process and all Information for Convenience reflect the Principal's current intention only, and may change at any time, and any such change is at the Tenderer's risk,

and the Tenderer represents and warrants that it has not relied, and will not rely, and will not allow its personnel to rely, upon the Information for Convenience for any purpose.

## 21. Protection of the Principal from claims by Tenderer or its personnel

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21.1 Except for the limited extent of liability under Clause 20.2, and without limiting any other provision of the Conditions of Offer, the Tenderer:

- releases the Principal and its personnel (**Released Persons**) from; and
- indemnifies the Released Persons against,

any claim of the Tenderer or its personnel, arising out of or in relation to:

- the Information for Convenience;
- the matters described in Clause 20.3; or
- the acts, defaults or omissions of any of:
  - the Released Persons (including the Principal taking Corrective Action as a result of the acts, defaults or omissions of any person, including third parties);
  - the Tenderer;
  - the Tenderer's personnel,

arising out of or in relation to:



## Major Conditions of Offer

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- the Conditions of Offer or the Information for Convenience;
- the Invitation Process or any other process derived from the Conditions of Offer; or
- the matters described in Clause 20.3,

and this Clause 21.1 may be pleaded by the Released Persons as a bar to any proceedings commenced by the Tenderer against the Released Persons in relation to the things described in this Clause 21.1.

This clause survives the expiry or termination (for any reason) of the Conditions of Offer.

## 22. Previous discussions/undertakings

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22.1 On the release of the Invitation to Offer, any previous undertakings, representations, promises or conditions in respect of the subject matter of the Invitation to Offer, will not be binding on the Principal.

## 23. Compliance with laws and other requirements

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23.1 The Tenderer must comply in all respects with:

- the terms of the Invitation to Offer;
- applicable Legislative Requirements;
- any applicable government code, policy or guideline;
- any current Australian/New Zealand Standard, and where an Australian/New Zealand Standard does not exist, the relevant and current international standard as set down by the International Standard Organisation; and
- any applicable Principal policies and procedures. Refer to [www.goldcoast.qld.gov.au](http://www.goldcoast.qld.gov.au) for all applicable policies and procedures which the Contractor must comply with.

## 24. Insurances, registrations or licensing

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24.1 In submitting its Offer, the Tenderer acknowledges and agrees that the following insurance policies must, at the Tenderer's expense, be effected and maintained by the Successful Tenderer under the Contract:

- workers compensation insurance in accordance with applicable Legislative Requirements
- public liability insurance for the amount specified in the Contract Header;
- professional indemnity insurance for the amount specified in the Contract Header; and
- any other insurances specified in the Conditions of Contract or the Contract Header.

24.2 Where any part of the Supply is such that the *Queensland Building and Construction Commission Act 1991 (Qld)*, or other legislation, requires the contractor and/or proposed subcontractors to be licensed or registered, submit evidence of the Tenderer's licensing or registration in the Contract Header and Response Forms and, to the extent the Tenderer has not obtained all licenses and registrations before it submits its Offer, a list of all outstanding licenses and registrations which will be obtained, if the Tenderer becomes the Successful Tenderer, before entering into any Contract for the carrying out of the Supply.

24.3 If, at the time of submitting its Offer, the Tenderer does not have the requested licenses, registration or insurance cover or to the specified amount, the Tenderer must, without limiting Clauses 24.2 and 24.4, indicate in the appropriate Response Form its willingness to effect such licenses, registrations or insurances at its own expense.

24.4 Subject to this clause, the Tenderer must provide in its Offer a certificate of currency for each of the required insurance policies if they have already been effected by the Tenderer at the date of its Offer and, to the extent the Tenderer has not effected the required insurance policies before it submits its Offer, a list of all outstanding insurances which will be effected, if the Tenderer becomes the Successful Tenderer, before entering into any Contract for the carrying out of the Supply. The Tenderer must also provide details of any aspect of its insurance policies that will be, or are likely to be, adverse to the Principal's interests.

## Major Conditions of Offer

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### 25. Competitive neutrality

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- 25.1 Offers submitted by any government owned business or Government Agency must be priced to comply with the applicable competitive neutrality principles of the respective government jurisdiction.

### 26. Opening of Offers

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- 26.1 Offers will not be opened publicly.

### 27. Procurement process

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- 27.1 The Principal may cancel or vary the Invitation Process at any time, whether before, on or after the Closing Date.
- 27.2 The Principal may conduct an Offer briefing/site inspection through the Invitation Process. Subject to Clause 27.3, Tenderers who do not attend the Offer briefing/site inspection are deemed to have attended and will still be eligible to submit an Offer.
- 27.3 Where a mandatory Offer briefing/site inspection is stipulated in the Invitation to Offer:
- the Offer briefing/site inspection will be mandatory for all Tenderers in order to gain sufficient information for the full execution of the Supply;
  - the Tenderer is to ensure and be responsible for obtaining all the relevant information necessary for the submission of an Offer, through attendance at the Offer briefing/site inspection.
  - any Tenderer who fails to attend the mandatory Offer briefing/site inspection will not have any grounds to claim that they had insufficient information for the full execution of the Supply and will be deemed to have equally sufficient information such as if they had attended.
- 27.4 Prior to the Closing Date, the Principal may issue an Addendum which could alter, add or remove some or all of the documents included in the Invitation to Offer. The Tenderer must acknowledge receipt of all Addenda in its Offer.
- 27.5 A Tenderer will not be entitled to claim compensation or loss from the Principal for any matter arising out of the Invitation Process, including but not limited to any failure by the Principal to comply with the Conditions of Offer.
- 27.6 If specified in the Invitation to Offer, a Tenderer must submit for trial or inspection, within a specified time period nominated by the Principal, a sample of the same make and model of any goods relevant to the Supply and specified in its Offer.

### 28. Evaluation of Offers

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- 28.1 The Offer Evaluation Process will involve an assessment of Conforming Offers, and any Non-Conforming Offers and Alternative Offers the Principal may choose to consider against Invitation to Offer: Offer Evaluation Process.
- 28.2 The Principal may, in its absolute discretion, consider Deviations as detailed Response Forms: Deviations
- 28.3 The Principal reserves the right to shortlist Tenderers during the Evaluation Process using the Evaluation Criteria as specified in the Invitation to Offer: Offer Evaluation Process.
- 28.4 Irrespective of whether it is stipulated in the Evaluation Process, the Evaluation Process may also involve, but is not limited to, discussions with Tenderers, reference checks, financial checks, credit checks, company searches, other relevant checks as necessary including reference to any publicly available materials, site visits, interviews with Tenderers and presentations from some or all Tenderers.

## Major Conditions of Offer

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- 28.5 The Principal may write to a Tenderer to seek clarification on information contained in an Offer. The Tenderer must submit the clarification to the Principal by the date and time requested by the Principal. Failure to provide the requested clarification will result in the Offer being deemed a Non-Conforming Offer.
- 28.6 Notwithstanding anything in the Invitation to Offer to the contrary, the Principal is under no obligation to:
- accept the cheapest, or any, Offer; or
  - accept any amendment or clarification to an Offer.
- 28.7 Notwithstanding anything in the Invitation to Offer to the contrary, the Principal may, as part of the Evaluation Process:
- apply such criteria and weightings as it sees fit;
  - if the Principal considers any Offer to be ambiguous, incorrect or incomplete:
    - consider, or refuse to consider, the Offer;
    - request further information from the Tenderer; or
    - request the Tenderer to amend its Offer; and
  - without limiting the Principal's rights or discretions, the Principal may accept or reject:
    - a Non-Conforming Offer or an Alternative Offer; or
    - an Offer that achieves an inadequate score against the Evaluation Criteria.

## 29. Errors in Offers

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- 29.1 The nature of the Contract will be as stated in the Invitation to Offer: Details.
- 29.2 For a lump sum contracts:
- the Tenderer must state the lump sum amount in the Response Form: Price Submission if a schedule of quantities and prices is not included in the Response Form: Price Submission;
  - the Tenderer must complete and submit the schedule of quantities and prices included in the Response Form: Price Submission (if applicable), or if not satisfied with the completeness of the schedule of quantities and prices included in the Response Form: Price Submission, the Tenderer must insert any further items which the Tenderer requires to price separately. The total lump sum amount will be the amount arrived at by summing the itemised amounts in the schedule of quantities and prices, and must agree with the correct addition of the itemised amounts;
  - if any correction is necessary in the priced schedule of quantities and prices to arrive at the total lump sum amount, the Tenderer must immediately make all such corrections in and to the priced schedule of quantities and prices as the Principal considers necessary for such purpose; and
  - such corrections must be made to the priced schedule of quantities and prices, and if those corrections are not made within such time as the Principal in the particular case directs, the Offer will be deemed a Non-Conforming Offer.
  - All other items not listed in the priced schedule of quantities and prices but necessary for the carrying of the Supply in accordance with the Contract will be deemed to be included in the priced schedule of quantities and prices.
- 29.3 For schedule of rates Contracts:
- the Tenderer must complete and submit the schedule of rates included in Response Form: Price Submission, or if:
    - not satisfied with the completeness of the schedule of rates included in the Response Form: Price Submission, the Tenderer must insert any further items which the Tenderer requires to price separately;
    - no schedule of rates is included in the Response Form: Price Submission, then submit a schedule or rates with its Offer, detailing the offered rates for the Contract;
  - if an error is made in the calculations or summation of the itemised amounts in schedules of rates, the Tenderer will be bound by the rates stated in the schedule or rates; and
  - all items not listed in the schedule of rates but necessary for carrying out the Supply in accordance with the Contract will be deemed to be included in the schedule of rates.

## Major Conditions of Offer

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- 29.4 For a combined lump sum and schedule of rates Contracts, the lump sum portion will be subject to the conditions applicable to a lump sum Contract and the schedule of rates portion will be subject to the conditions applicable to a schedule of rates Contract.

### 30. Post-offer negotiations or other forms of communication

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- 30.1 The Principal reserves the right at its sole and unfettered discretion to enter into post-offer negotiations with one or more Tenderers and need not afford an equal opportunity to all.
- 30.2 The Principal may interview a Tenderer in relation to its Offer. The Tenderer should be represented at the interview by personnel who are authorised to make decisions on behalf of the Tenderer and who are conversant with all technical, financial and contractual details of the Offer, as applicable.
- 30.3 The Principal may seek further information from the Tenderer in writing. Any information provided by or on behalf of the Tenderer verbally must promptly be confirmed in writing if so required by the Principal.
- 30.4 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.
- 30.5 The Principal may invite all Tenderers who submitted an Offer to change their Offer where there is a change in the Principal's Requirements after the Closing Date in accordance with the Principal's Procurement Policy and Contract Manual. This may occur between the period after the Closing Date but prior to any Offer being recommended for acceptance. If the change in the Principal's Requirements results in additional or alternative Tenderers being able to submit an Offer, consideration will be given to withdrawing the Invitation to Offer and re-advertising.

### 31. Commissions and incentives

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- 31.1 The Tenderer must not, and must ensure that its officers, employees, agents and/or subcontractors do not, give or offer anything to the Principal, or any officer or employee of the Principal, or to a parent, spouse, child or associate of an officer or employee of the Principal, including any commission, inducement, gift or reward, which could in any way tend or be perceived as attempting to, influence the Principal's actions in relation to an Offer.
- 31.2 If the Principal discovers at any time that a Tenderer has breached this clause, the Principal may elect, in addition to any other action, not to consider that Offer.

### 32. Conflict of Interest

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- 32.1 The Tenderer warrants that to the best of its knowledge, as at the date of its Offer, neither the Tenderer nor any of its officers, employees, agents and/or subcontractors have, or are likely to have, any Conflict of Interest in any matters connected with the Invitation Process, except as expressly disclosed in Response Form: Conflict of Interest Declaration and Confidentiality Agreement.
- 32.2 If a Conflict of Interest or any potential, perceived or risk of a Conflict of Interest arises during the Invitation Process or the Contract, the Tenderer must immediately give written notice to the Contact Officer.
- 32.3 The Tenderer must:
- address any actual, potential or perceived Conflict of Interest, to the Principal's satisfaction;
  - sign any document (including any statutory declaration) and provide additional information required by the Principal in respect of any actual, potential or perceived Conflict of Interest; and
  - comply with the Principal's probity and Conflict of Interest requirements, as notified in accordance with

## Major Conditions of Offer

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the Conditions of Offer from time to time.

### 33. Collusion

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33.1 In submitting its Offer, the Tenderer warrants to the Principal that, except as expressly disclosed in Response Form: Declaration of Commissions and Incentives, Moral rights and Collusion that:

- the Offer was not prepared with any consultation, communication, contract, arrangement or understanding with any competitor (including any other Tenderers) regarding:
  - prices;
  - methods, factors or formulae used to calculate prices;
  - the intention or decision to submit or not to submit an Offer;
  - the submission of a Non-Conforming Offer;
  - the quality, quantity, specifications or delivery particulars of the Supply to which the Invitation to Offer or Offer relates; and
  - the terms of its Offer or a competitor's Offer.
- it has not (and will not during the Invitation Process):
  - attempt to discuss the Invitation Process, or obtain any information regarding the Invitation Process, from any personnel of the Principal other than the Contact Officer, except to the extent that the Conditions of Offer, or the Contact Officer, expressly allows otherwise;
  - enter into any contact, arrangement or understanding with any other Tenderer or any trade, industry or other association to the effect that the Tenderer, if its Offer is successful, will confer any benefit on any other person;
  - use any information in preparing its Offer that it or its personnel have obtained unlawfully;
  - solicit any of the Principal's personnel to enter into the employment of either the Tenderer or its personnel, or contract with the Tenderer or its personnel, for the performance of any of the Supply;
  - 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 Tenderer) relating in any way to the Invitation to Offer or Offer;
  - 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 Tenderer) relating in any way to the Invitation to Offer or Offer;
  - attempt to influence or persuade the Principal or any of the Principal's personnel;
  - engage in any activity, or obtain any interest, that is likely to result in a Conflict of Interest between the Principal and the Tenderer;
  - engage in any conduct in relation to the Conditions of Offer or the Invitation Process that is misleading or deceptive; or
  - 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 to Offer or Offer; and
- the Tenderer 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.

33.2 Any proceedings relating to anti-competitive conduct in Australia or overseas to which the Tenderer and/or any corporation or person associated with the Offer, including directors and senior management, have been subject, requires full disclosure as a minimum in Response Form: Declaration of Commissions and Incentives, Moral rights and Collusion:

- the names of the parties to the proceedings;
- the case number;
- the general nature of the proceedings; and
- the outcome or current status of the proceedings.

33.3 The Principal reserves the right, at its sole and unfettered discretion, to exclude the Tenderer from the Invitation Process if the Tenderer, or any corporation or person, including directors or senior management 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.

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- 33.4 Furthermore, the Principal reserves the right, at its sole and unfettered discretion, to exclude the Tenderer 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 the clause.
- 33.5 In submitting its Offer, the Tenderer acknowledges that if the Principal accepts the Offer and enters into a Contract, the Principal will do so in reliance of the warranties in this clause.
- 33.6 The Tenderer must:
- prior to submitting any Offer, obtain or procure any approval, qualification, registration or licence required to be held by the Tenderer to enable it lawfully to lodge any Offer;
  - promptly notify the Principal of any change of control that happens to it, or to any entity that forms part of the Tenderer, during the Invitation Process or if it is aware of any impending or proposed change of control to such entities; and
  - comply with all Legislative Requirements at all times in relation to its participation in the Invitation Process and ensure that its personnel do likewise.
- 33.7 Without limiting any other right of the Principal, the Principal may take Corrective Action if the Tenderer breaches Clauses 31, 32 or 33.
- 33.8 The Tenderer must indemnify the Principal from and against all expenses (including legal fees on an indemnity basis and expert's fees), damages and losses (including Special Losses) suffered or incurred by the Principal in relation to:
- the Tenderer's breach of Clauses 31, 32 or 33; and
  - the Principal exercising its rights under the paragraph above or the Principal defending any proceedings relating to the exercise of its rights under the paragraph above.

## 34. No publicity or advertisement

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- 34.1 The Principal will be solely responsible for all media communications in respect to the Invitation to Offer, the Invitation Process and the subsequent award of Contract. A Tenderer must not issue any advertisement, information, publication, document or article for publication or any statement to the media concerning the Invitation to Offer, the Invitation Process and the subsequent Contract without the Consent of the Principal. The Tenderer must refer to the Principal any media enquiries concerning the Invitation to Offer or the Invitation Process.

## 35. Acceptance and/or rejection

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- 35.1 The Principal will not be bound to accept the lowest or any Offer and may accept an Offer which, on consideration of all the circumstances, appears to be the one most advantageous to the Principal.

## 36. Successful Tenderer

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- 36.1 An Offer is accepted by the Principal only when the Principal notifies the Tenderer in writing that its Offer has been accepted. Notification that the Offer has been accepted does not authorise the Tenderer to commence carrying out the Supply.
- 36.2 Subject to Clause 36.3, no contract for the performance of the Supply will come into force between the Principal and the Tenderer unless and until the parties execute the Contract Header.
- 36.3 The Successful Tenderer must execute the Contract Header in duplicate and return the original duplicate signed Contract Header to the Principal within 10 Business Days of being requested in writing to do so (or any lesser period set out in the notice), and if it fails to do so within that time, it will be deemed to have executed the Contract Header. The Tenderer irrevocably authorises the Principal to complete missing details in the Contract Header to ensure the Contract Header is complete and ready to be executed.

## Major Conditions of Offer

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- 36.4 This Agreement may be executed in any number of counterparts, including by exchange of signed counterparts by hand delivery, post, email, or a combination thereof. All counterparts taken together shall comprise this Agreement.
- 36.5 This Agreement, or any individual counterpart, may also be executed by the use of electronic or digital signature which the parties agree satisfies applicable requirements for electronic execution of the Agreement (including requirements of the *Electronic Transactions Act 2001* (Qld) and any equivalent Commonwealth, State or Territory legislation), which the parties agree shall have the same force and effect as a wet ink witnessed signature. A party who receives such an electronic or digital signature may assume that such execution was validly and lawfully performed by the other party.
- 36.6 To the extent that the parties execute this Agreement by an electronic execution method, they each agree that they have provided their consent to the use of the relevant execution method and may not subsequently challenge the validity of this Agreement on the grounds of consent or the effectiveness of the chosen execution method.
- 36.7 Delivery of a copy of this Agreement or any other document contemplated by it, bearing an original or electronic signature, by email in portable document format (.pdf) form, or by any other electronic means intended to preserve the original appearance of a document, shall have the same effect as physical delivery of the paper document bearing an original or electronic signature.
- 36.8 To the extent that any person signs this Agreement as representative of a party, that person warrants to each other party that he or she is duly authorised to enter into this Agreement on behalf of the party he or she represents and his or her execution will bind that party under its constituent documents and jurisdiction, and the jurisdiction of this Agreement.
- 36.9 If there is any defect in the execution of this Agreement or if reasonably requested by any party, each party undertakes to ratify its execution of this Agreement and or execute a second copy of this Agreement or any document pursuant to it that is required in wet ink form, including for the purpose of registration or submission of documents required in original form. Such execution shall be deemed a ratification and relate back to that party's original execution of this Agreement.

## 37. Advice to unsuccessful Tenderers

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- 37.1 Unsuccessful Tenderers will be notified in writing that they have been unsuccessful.

## 38. Decision and feedback

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- 38.1 All Tenderers, whether successful or unsuccessful, may seek feedback regarding their Offer results from the Contact Officer at the completion of the Invitation Process.
- 38.2 Feedback is an opportunity to provide the Successful Tenderer or an unsuccessful Tenderer with information that may assist the Tenderer to improve any future offers submitted to the Principal. The feedback session is not an opportunity to discuss the outcome of the Evaluation Process or the relative merits of any other Offer submitted.

## 39. Governing law

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- 39.1 Any Offer submitted in response to the Invitation to Offer will be governed by and construed in accordance with the laws of Queensland.
- 39.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland.

## 40. Right to Information and Disclosure

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- 40.1 The RTI Act provides members of the public with a legally enforceable right to access documents held by the Principal.

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- 40.2 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.
- 40.3 The information contained in an Offer is potentially subject to disclosure to third parties.
- 40.4 If disclosure under the RTI Act, and/or general disclosure of its Offer, in whole or in part, would be of concern to a Tenderer, 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: Offer Authorisation and Certification. The Principal cannot guarantee that any information provided by the Tenderer, including information that is identified by the Tenderer in Response Form 'Offer Authorisation and Certification' will be protected from disclosure under the RTI Act.
- 40.5 Despite any other provision of the Invitation to Offer, the Principal is entitled to publish on the Principal's website [cityofgoldcoast.com.au](http://cityofgoldcoast.com.au) or by any other means, the following details:
- name of the Successful Tenderer;
  - value of the Contract;
  - a description of the Supply; and
  - Contract commencement date or award date.
- 40.6 Any proposed variations by the Tenderer to this clause which purport to take away or reduce the entitlements that would otherwise be provided to the Principal under that clause will be null and void.
- 40.7 For more information regarding RTI Act, please contact the RTI Officer as specified below:
- Name: RTI/IP Decision Maker
  - Address: PO Box 5042  
Gold Coast Mail Centre Q 9729
  - Email: [rtiip@goldcoast.qld.gov.au](mailto:rtiip@goldcoast.qld.gov.au)

Information regarding Right to Information can be found on [cityofgoldcoast.com.au](http://cityofgoldcoast.com.au)

## 41. Complaint Management

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- 41.1 It at any time during the Invitation Process, a Tenderer considers that it has been unreasonably or unfairly treated and it has not been able to resolve the issue with the Contact Officer, the Tenderer must contact the Chief Procurement Officer, and ask for the matter to be dealt with in accordance with the Principal's procurement complaint process. The request will need to be in writing and include the following details:
- dates and facts relevant to the complaint;
  - parties involved;
  - issues that require resolution;
  - outcomes the Tenderer considers appropriate for resolving any issues; and
  - Tenderer's contact details.

Information regarding the Principal's procurement complaint process can be found on [cityofgoldcoast.com.au/procurement-complaints-process](http://cityofgoldcoast.com.au/procurement-complaints-process)

- 41.2 If the Principal considers the complaint is legitimate, it may take Corrective Action.

## 42. Principal's general discretions

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- 42.1 Any right, discretion, power, assessment, determination or decision that the Principal has under or in connection with the Condition of Offer may be exercised or made:
- in its sole and unfettered discretion (without being under any obligation to do so);
  - conditionally or unconditionally;
  - without being required to give reasons; and
  - without the need to act reasonably, or to act for the benefit of the Tenderer.
- 42.2 Without limiting the Principal's rights or discretions, the Principal may do any one or more of the following (even to the extent this may be contrary to the express terms of the Invitation to Offer):



## Major Conditions of Offer

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- either by Addendum, or by public notice, immediately terminate the Invitation Process at any time before entering into the Contract; and
- either:
  - commence a new invitation process for the Supply after terminating this Invitation Process under this clause; or
  - subsequently carry out all or any part of the Supply in a manner that the Principal sees fit, either itself or by engaging another to do so,

and the Tenderer will have no entitlement to claim in connection with either of those actions.

42.3 Without limiting its rights or discretions under the Conditions of Offer or otherwise under Legislative Requirements, the Principal may at any time do any of the following:

- before the Closing Date, issue to all Tenderers any Addendum (including in response to an Offer);
- cancel the Invitation Process by notice in writing to the Tenderers;
- carry out any other procurement process for the Supply;
- if a Tenderer suffers an Insolvency Event, do any one or more of cease considering the Tenderer's participation in the Invitation Process, cease considering that Tenderer's Offer, or suspend or terminate the Invitation Process;
- accept portions of the Offer, and of any other Offer;
- carry out any part of the Supply itself;
- have any other persons carry out some or all of the Supply, whether or not they were invited to, or did, submit an Offer;
- by notice invite one or more Tenderers to change their Offer to take account of a change in the Invitation to Offer or the Invitation Process;
- pre-qualify, shortlist or proceed to negotiate with one or more Tenderers or other persons, or enter into discussions with one or more Tenderers or other persons, in respect of the Supply, and without any obligation to notify other Tenderers that it is so proceeding;
- cease negotiations or discussions with any Tenderer at any time;
- by notice, change any of the Invitation to Offer, Invitation Process, the Supply or any other aspect of the Invitation to Offer in any way;
- provide additional information to any or all Tenderers;
- by notice, suspend the Invitation Process for a reasonable period;
- consider or accept, or refuse to consider or accept, any Offer or to shortlist any Offer received (whether or not a Conforming Offer, a Non-Conforming Offer or an Alternative Offer), if the Tenderer has failed to comply with the Invitation to Offer or the Invitation Process;
- seek and consider, or not consider, additional Offers from (on the same or different terms), or re-offer the Supply with, all or any of the Tenderers who have submitted an Offer, or any other person (whether or not they were invited to submit or did submit an Offer); and
- before the end of the Invitation Process:
  - invite any other person to participate as a Tenderer in the Invitation Process; or
  - accept a substitution of, withdrawal of, or addition to any of the entities comprising a Tenderer, with the approved entities together comprising the Tenderer for the purpose of the Invitation to Offer.

42.4 Despite anything in the Invitation to Offer to the contrary:

- the Principal is not obliged to exercise any executive or statutory right or duty, or to influence, override, interfere with or direct any other Government Agency in the proper exercise and performance of any of its executive or statutory rights or duties;
- nothing in the Invitation to Offer has the effect of constraining the Principal or placing any fetter on the Principal's discretion to exercise or not to exercise any of its executive or statutory rights or duties; and
- each Tenderer will not be entitled to make any claim against the Principal relating to any exercise or failure of the Principal to exercise its executive or statutory rights or duties.

## Major Conditions of Offer

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### 43. General

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- 43.1 The Invitation to Offer supersedes all previous agreements about its subject matter and any agreements collateral to those agreements. The Invitation to Offer embodies the entire agreement between the parties.
- 43.2 To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, has no effect except to the extent expressly set out or incorporated by reference in the Invitation to Offer.
- 43.3 Each Party acknowledges and agrees that it does not rely on any prior conduct or representation by the other Party in entering into the Invitation to Offer.
- 43.4 Each Party must do all things necessary to give effect to the Invitation to Offer and the transactions contemplated by it.
- 43.5 The failure of a Party to require full or partial performance of a provision of the Invitation to Offer does not affect the right of that Party to require performance subsequently.
- 43.6 A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- 43.7 A right under the Invitation to Offer may only be waived in writing signed by the Party granting the waiver, and is effective only to the extent specifically set out in that waiver.
- 43.8 A clause or part of a clause of the Invitation to Offer that is illegal or unenforceable may be severed from the Invitation to Offer and the remaining clauses or parts of the clause of the Invitation to Offer continue in force.
- 43.9 If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from the Invitation to Offer in the relevant jurisdiction, but the rest of the Invitation to Offer will not be affected.
- 43.10 Each indemnity in the Invitation to Offer survives the expiry, or termination for any reason, of the Invitation to Offer.
- 43.11 The Principal need not incur any expense before enforcing an indemnity under the Invitation to Offer.
- 43.12 Any third party whom the Tenderer has promised to indemnify under the Invitation to Offer may accept the benefit of that indemnity for the purposes of section 55 of the *Property Law Act 1974* (Qld) by notice in writing to the registered office of the Tenderer within 24 months from the termination of the Invitation to Offer.
- 43.13 Any clause of the Invitation to Offer which by implication from its purpose, or by express statement, is intended to survive the termination or expiry of the Invitation to Offer, will survive the rescission, termination (for any reason) or expiry of the Invitation to Offer.
- 43.14 No provision of the Invitation to Offer which is expressed to survive the expiry or termination of the Invitation to Offer will, as a matter of interpretation, prevent any other clause of the Invitation to Offer from surviving the expiry, rescission or termination of the Invitation to Offer.

### 44. The Australian Government Building and Construction Industry Work Health and Safety Accreditation Scheme

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- 44.1 This Clause 44 applies if:
- the Supply involves the engagement of a Builder or a Project Manager;
  - the Building Work is being Indirectly Funded by the Australian Government;
  - the Threshold Amounts are satisfied; and
  - the Price and Approved Expenses for the Building Work is \$4 million (GST inclusive) or more.

## Major Conditions of Offer

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- 44.2 The Australian Government is committed to improving work health and safety outcomes in the building and construction industry. An important initiative to achieve this is the Scheme. The Scheme is established by the BCIIIP Act and specified in the *Fair Work (Building Industry - Accreditation Scheme) Regulation 2016* (Cth).
- 44.3 The Scheme accreditation requirement applies to all Building Work that is being Indirectly Funded by the Australian Government.
- 44.4 Only persons who are accredited under the Scheme are able to contract for Building Work being Indirectly Funded by the Australian Government.
- 44.5 If the Supply is for the engagement of a Builder, the Successful Tenderer must:
- be accredited under the Scheme when entering into the Contract;
  - maintain accreditation while the Building Work is being carried out; and
  - comply with all conditions of Scheme accreditation and the National Construction Code performance requirements in relation to building materials.
- 44.6 If the Supply is for the engagement of a Project Manager, the Successful Tenderer must ensure that:
- all contracts for Building Work are only entered into with Builders who are accredited under the Scheme;
  - the Builder contracted to undertake the Building Work maintain accreditation while carrying out the Building Work; and
  - the Builder complies with all conditions of Scheme accreditation and the National Construction Code performance requirements in relation to building materials.
- 44.7 For the purposes of this Clause 44, the terms:

**Australian Government** means the Commonwealth (Australian Government) or a Commonwealth authority;

**BCIIP Act** means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth);

**Builder** has the meaning given in section 43(8) of the BCIIIP Act. Section 26(1)(f) of the *Fair Work (Building Industry - Accreditation Scheme) Regulation 2016* (Cth) outlines provisions applying to joint venture arrangements that include accredited and unaccredited Builders;

**Building Work** has the meaning given in section 6 of the BCIIIP Act;

**Indirectly Funded** means funding provided by the Australian Government through grants and other programs, including:

- building projects where the Australian Government provides money through a funding agreement or grants, for example, to the Principal who then may contract with persons who will undertake the Building Work or persons who will arrange for the Building Work to be carried out; or
- building projects that the Principal, who receives Australian Government funding, facilitates by agreement;

**Project Manager** means a person who administers some or all of the responsibilities of the Principal in the delivery of a project, including arranging for Building Work to be carried out utilising Australian Government funding, including a developer or consortium;

**Scheme** means the Australian Government Building and Construction Industry Work Health and Safety Accreditation Scheme described in section 43 of BCIIIP Act; and

**Threshold Amounts** means:

- the value of the Australian Government contribution to the project is at least \$6 million and represents at least 50 per cent of the total construction project value; or
- the Australian Government contribution to a project is \$10 million or more, irrespective of the proportion of Australian Government funding.

Where the above terms are amended or replaced pursuant to any Legislative Requirements, then those terms above will be amended or replaced and this Clause 44 will be amended and read accordingly.

## Major Conditions of Offer

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### 45. The Queensland Code of Practice for the Building and Construction Industry

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45.1 This Clause 45 applies if:

- the Supply involves Building and Construction Work;
- the Building and Construction Work is Publicly Funded Building and Construction Works; and
- the Price and Approved Expenses for the Building and Construction Work is \$2 million (GST inclusive) or more.

45.2 The Queensland and the Queensland Guidelines apply to the project the subject of the Invitation to Offer.

45.3 By submitting an Offer, the Tenderer acknowledges and agrees that:

- it is aware that the Queensland Code and the Queensland Guidelines apply to the Invitation to Offer and is an essential condition to being considered for the Invitation Process;
- it is deemed to have read and understood the Queensland Code and the Queensland Guidelines and the obligations they impose;
- it will comply with the Queensland Code and the Queensland Guidelines on this project if selected as the Successful Tenderer;
- it will agree, if selected as the Successful Tenderer, to contractual terms to give effect to the Queensland Code and the Queensland Guidelines and mechanisms to ensure their compliance and enforcement;
- any party which is precluded from performing any part of the Supply to which the Queensland Code and the Queensland Guidelines apply is excluded from consideration in the Invitation Process; and
- it will comply with, and all of its Related Entities will comply with, the Queensland Code and the Queensland Guidelines in respect of any of their Building and Construction Work (including any subsequent Privately Funded Building and Construction Work), on and from the date of submitting its Offer.

45.4 The Tenderer agrees that it must include in its Offer:

- a workplace relations management plan and any other documents and information necessary to meet the requirements of section 5.1 of the Queensland Guidelines (if applicable); and
- the Compliance Schedule within the Response Forms, properly executed by or on behalf of the Tenderer.

45.5 The Tenderer acknowledges that by submitting an Offer it agrees to the Principal and authorised personnel of the BCCB taking steps to investigate claims and assertions made by the Tenderer in any of the documents referred to in Clause 45.4 before any Contract is awarded. The Tenderer acknowledges and agrees that co-operation with the Principal and the BCCB is an essential component of the Invitation Process. Co-operation by the Tenderer will include allowing the Principal and authorised personnel of the BCCB to:

- access premises and sites controlled by the Tenderer or its related entities;
- monitor and investigate compliance with the Queensland Code and the Queensland Guidelines, including inspecting and copying relevant records and documents;
- inspect any work, material, machinery, appliance article or facility; and
- interview any person,

as is necessary to investigate the Tenderer's claims or to demonstrate the Tenderer's current or, where relevant, past compliance with the Queensland Code and the Queensland Guidelines during the Invitation Process.

## Major Conditions of Offer

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45.6 Notwithstanding any other provision of the Invitation to Offer, the Tenderer agrees and consents to the disclosure of information concerning the Tenderer's, and the Tenderer's Related Entities', compliance with the Queensland Code and the Queensland Guidelines, including the disclosure of details of past and present conduct relating to the Queensland Code and the Queensland Guidelines, the National Construction Code, as varied from time to time, including whether or not sanctions have been imposed on the Tenderer or any of its Related Entities by the Commonwealth or any State or any Government Agency. This consent is given to the State of Queensland, including its agencies, Ministers, the BCCB (and its authorised personnel) and the Principal for purposes including monitoring and investigating compliance and ensuring, facilitating and promoting compliance with the Queensland Code and the Queensland Guidelines.

45.7 Where the Tenderer proposes to subcontract a part of the Supply, and it is authorised to do so, it agrees that it will ensure, through contract, that each subcontractor or consultant agrees to:

- the items in Clauses 45.3 and 45.6 in respect of the relevant subcontractor or consultant;
- comply with the applicable plans and policies on the project referred to in Clause 45.4; and
- where a nominated subcontractor or consultant is proposed in an Offer, that nominated party co-operates with Queensland Government authorised personnel during the Invitation Process for the purposes outlined in Clause 45.6.

45.8 For the purposes of this Clause 45 the terms:

**BCCB** has the meaning given in section 11 of the Queensland Guidelines;

**Building and Construction Work** has the meaning given in section 11 of the Queensland Guidelines;

**Client Agency** has the meaning given in section 11 of the Queensland Guidelines;

**Ministers** has the meaning given in section 11 of the Queensland Guidelines;

**Privately Funded Building and Construction Work** has the meaning given in section 11 of the Queensland Guidelines;

**Publicly Funded Building and Construction Work** has the meaning given in section 11 of the Queensland Guidelines;

**Queensland Code** means the Queensland Government's Code of Practice for the Building and Construction Industry;

**Queensland Guidelines** means the Queensland Government's Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry; and

**Related Entities** has the meaning given in section 11 of the Queensland Guidelines.

Where the above terms are amended or replaced pursuant to any Legislative Requirements, then those terms above will be amended or replaced and this Clause 45 will be amended and read accordingly.

**FOR MORE INFORMATION**

**P** 1300 GOLDCOAST (1300 465 326)  
**W** [cityofgoldcoast.com.au](http://cityofgoldcoast.com.au)