

1 Agreement to be bound by ITO

In consideration of the Principal:

- (a) inviting the Tenderer to submit an Offer for the Supply; and
 - (b) agreeing to receive an Offer submitted by the Tenderer in accordance with, and subject to, this ITO,
- the Tenderer agrees to be bound by this ITO.

2 Tenderer enquiries

- (a) Any enquiries by Tenderers are directed to the Contact Officer by the time and date specified in the Quotation Form (**Closing Date for Enquiries**).
- (b) Any question submitted by Tenderers is submitted on the basis that the Principal may circulate the Tenderer's questions and the Principal's answers to all other Tenderers without disclosing the source of the questions.
- (c) The Principal reserves the right not to respond to any enquiry or question.
- (d) Without limiting Clause 2(c), the Contact Officer will not respond to any enquiries received after the Closing Date for Enquiries.

3 Lodgement of Offers

- (a) Offers must be submitted electronically to the email address specified in the Quotation Form, and be received by the Principal by the Closing Date.
- (b) Offers lodged with or received by the Principal after the Closing Date are deemed to be a Non-Conforming Offer.
- (c) Any Offer lodged remains valid and binding upon the Tenderer for a period of 90 days from the Closing Date or such later date as may be mutually agreed between the Tenderer and the Principal and must not otherwise be withdrawn by the Tenderer.

4 Conforming and non-conforming Offer

4.1 Conforming Offer

To be considered a Conforming Offer, an Offer must:

- (a) be for the Supply specified
- (b) contain a completed Quotation Form
- (c) contain completed Response Forms
- (d) include any other information required in this ITO, the Quotation Form and the Response Forms
- (e) strictly comply with the Conditions of Contract and the Principal's Requirements with no departures; and
- (f) in all other respects comply with this ITO and all applicable Legislative Requirements.

4.2 Deviations

Tenderers may propose deviations from the Conditions of Contract but only if they are included in the Quotation Form.

4.3 Non-Conforming Offer

- (a) An Offer that does not comply with Clause 4.1 (including an Offer that contains any deviations from the Conditions of Contract) is a Non-Conforming Offer.
- (b) The Principal may, but is not bound to, consider or accept a Non-Conforming Offer.

5 Principal's discretion

- (a) The Principal may, at any time prior to the acceptance of an Offer in accordance with Clause 5(e), modify or clarify any provision or part of this ITO by issuing a written addendum to all Tenderers. The Tenderer must acknowledge receipt of any written addenda in its Offer, listing all addenda received.
- (b) The Principal is under no obligation to:
 - (i) review, evaluate or consider any Offer submitted
 - (ii) accept the lowest Offer; or
 - (iii) accept any Offer.
- (c) Without limiting any term of this ITO, the Principal may, at any time prior to the acceptance of an Offer in accordance with Clause 5(e), accept or reject any Offer (including rejecting all Offers in order to reissue this ITO), annul the Invitation Process and reject all Offers, or terminate the Invitation Process without any obligation to inform the affected Tenderer or Tenderers of the grounds for the Principal's action or inaction.
- (d) The Principal may, in its absolute discretion, do one or more of the following:
 - (i) request clarification or additional information from any Tenderer
 - (ii) provide additional information to any or all Tenderers
 - (iii) invite a Tenderer (but not others) to change its Offer to take account of a change in any regard concerning the Invitation Process, including to the Principal's Requirements
 - (iv) discontinue or exclude participation by any Tenderer in the Invitation Process or discontinue negotiations with any Tenderer
 - (v) proceed to negotiate with one or more Tenderers or a third party without any obligation to notify other or any Tenderers that it is so proceeding
 - (vi) enter into discussions with one or more Tenderers or a third party including as to their Price
 - (vii) change the structure or any of the terms and procedures relating to the Invitation Process (including timeframes)
 - (viii) suspend, reinstate or decide not to proceed with the Invitation Process and not enter any contract for the Supply
 - (ix) enter into any contract for the Supply with any third party or perform the Supply itself
 - (x) do any other act or thing that it sees fit in relation to this Invitation Process; and
 - (xi) vary the Conditions of Contract and/or the Principal's Requirements.
- (e) An Offer is deemed to be accepted by the Principal only when the Principal provides to the Tenderer an authorised signed copy of the Quotation Form

- (f) submitted as part of the Tenderer's Offer or, if the parties have agreed, variations to the Tenderer's Offer, consistent with the agreed variations.
- On receipt of the Principal's signed Quotation Form under Clause 5(e):
- (i) the Tenderer will be bound to carry out the Supply; and
 - (ii) a contract will come into effect between the Principal and Tenderer comprising the documents specified in the signed Quotation Form.

6 Warranties

- (a) In submitting an Offer, the Tenderer warrants that it has carried out all relevant investigations (including of the Site and its surrounds and whether or not the Tenderer has availed itself of any opportunity to inspect the Site or otherwise) and has examined and acquainted itself with and satisfied itself concerning:
 - (i) the contents of this ITO and its completeness, currency and accuracy
 - (ii) all information which is relevant to the risks, contingencies and other circumstances which could affect the Offer or its carrying out of the Supply
 - (iii) the accuracy, completeness and sufficiency of its Offer; and
 - (iv) the appropriateness and sufficiency of the Price and timeframes offered by the Tenderer in its Offer to carry out the Supply.
- (b) In submitting its Offer (and for each day during the Offer validity period), the Tenderer further warrants:
 - (i) the accuracy of all information provided by the Tenderer in its Offer
 - (ii) that it has all necessary experience, skill and resources to perform and carry out its obligations in accordance with this ITO and its Offer
 - (iii) that it is willing to accept the contractual terms and conditions of the Principal as contained or described in this ITO
 - (iv) that the Tenderer is able to commence the Supply as required by the Principal; and
 - (v) that its Officer complies with Legislative Requirements.

7 Information required after submission of Offers

- (a) The Tenderer must provide, after the submission of its Offer, any additional information which may be requested by the Principal for the consideration or evaluation of the Offer or Tenderer.
- (b) The Principal may, after the Closing Date, invite all or any Tenderers to change their Offer to take into account changes to this ITO as may be advised by the Principal.

8 Evaluation criteria

- (a) Evaluation of Offers will be generally in accordance with the requirements of the *Local Government Act 2009* (Qld) and its regulation. The criteria set out in the Quotation Form and the Response Forms may also be taken into consideration by the Principal in assessing Offers and Tenderers.
- (b) Without limitation to the Principal's rights under any other provision of this ITO, the Principal may take into account any information from its own and other sources in accepting, rejecting or evaluating Offers and Tenderers.
- (c) Without limitation to the Principal's rights under any other provision of this ITO, the Principal may change any criteria set out or referred to in the Quotation Form without any obligation to notify Tenderers of such change.

9 Reliance by Tenderer

- (a) The Principal does not make any representations, express, implied or inferred, or provide any undertakings to Tenderers other than to invite them to submit an Offer. Any information supplied to a Tenderer in this ITO or otherwise or in subsequent oral or written communication by or on behalf of the Principal (including at any Site visit or briefing specified in the Quotation Form) is provided to the Tenderer for convenience only and may not be complete, up to date or accurate.
- (b) The Tenderer will not rely upon any matter disclosed or representation, warranty or statement (oral or otherwise) made to the Tenderer by or on behalf of the Principal, whether in this ITO or otherwise, and must make and rely solely upon its own independent investigation, judgment and assessment of any such matter or representation.
- (c) The Tenderer must carefully review this ITO and all documentation and all other material provided and must make any enquiries which the Tenderer considers necessary or desirable to verify the information and materials contained in this ITO or in any subsequent oral or written communication or material. The Tenderer has no right or entitlement for time or financial compensation of any kind arising from, or with respect to, or by reason of any error, omission, or misrepresentation (including for any incompleteness or inaccuracy) in, or in connection with, this ITO.
- (d) The Tenderer releases the Principal from any costs, expenses, loss or damages, or any liability arising from any claim, suit, demand, proceeding or action which, but for this ITO, the Tenderer had or may have had against the Principal in respect of any matter disclosed or not disclosed, statement, representation or warranty (oral or otherwise) made or not made to the Tenderer by, or on behalf of, the Principal.

10 Compliance

- (a) The Tenderer must:
 - (i) prior to lodging any Offer, obtain or procure any approval, qualification, registration or licence required to be held by the Tenderer to enable it to lawfully to lodge any Offer, enter into the contract for the Supply and carry out the Supply; and
 - (ii) in preparing and lodging any Offer (including in accessing the Site for any reason) comply with all applicable Legislative Requirements and the Principal's Requirements and Principal's policies.
- (b) The Tenderer warrants that:
 - (i) neither the Tenderer nor any of its employees, officers or agents nor any other party on its behalf had any knowledge of the Price or Offer of

- any other Tenderer prior to submitting its Offer nor has the Tenderer disclosed to any rival Tenderer its Price or any part of its Offer
- (ii) neither the Tenderer nor any of its employees, officers or agents nor any other party on its behalf have entered into any contract, arrangement or understanding having the result that on having its Offer accepted in accordance with Clause 5(e), the Tenderer will pay or make available to any unsuccessful Tenderer any moneys or other reward or benefit in respect of or in relation to the Offer; and
 - (iii) the Offer is a genuine and competitive offer.

11 Conflicts of Interest

- (a) If, at any time, an actual or potential conflict of interest arises for any Tenderer, that Tenderer must immediately notify the Principal in writing of that conflict of interest.
- (b) If a Tenderer notifies the Principal of an actual or potential conflict of interest or the Principal becomes aware of the existence of an actual or potential conflict of interest, the Principal may, in its absolute discretion:
 - (i) enter into discussions to seek to resolve such conflict of interest
 - (ii) cease further consideration of and disregard the Offer lodged by that Tenderer; and/or
 - (iii) take any other action, as it considers appropriate.
- (c) Any Tenderer who directly or indirectly canvasses support or advantage of any kind from an elected member, employee or agent of the Principal will be disqualified and any Offer submitted will not be considered.

12 Tenderer's costs

The Principal is not liable to the Tenderer for any costs, expenses, loss or damages, howsoever arising which a Tenderer incurs or becomes liable for in relation to, or in connection with, the preparation of an Offer, any representations, statements or warranties by or on behalf of the Principal, the participation in the Invitation Process, including submission of an Offer, subsequent clarifications to an Offer, submissions after lodgement of an Offer (whether or not that submission is required by the Principal), or any other part of the Invitation Process (including the ITO) and the Tenderer releases the Principal from any such claim whatsoever and howsoever brought. Each Tenderer participates in this Invitation Process at its own risk and cost.

13 Privacy

In relation to any Personal Information (as defined in the *Privacy Act 1988* (Cth) (**Privacy Act**)) provided by a Tenderer in connection with its Offer, the Tenderer warrants to the Principal that:

- (a) the Tenderer has obtained the consent of each individual about which any Personal Information is provided; and
- (b) the Tenderer has ensured or will ensure, within the time required by the Privacy Act, that it has complied with the Privacy Act in relation to each individual about whom any Personal Information is provided.

The Contractor warrants that:

- (c) it has complied with all of its obligations under the *Information Privacy Act 2009* (Qld) (**IPA**) in relation to information supplied to the Principal about the Contractor's personnel; and
- (d) any Personal Information (as defined in the IPA) exchanged between the Contractor and Principal must be dealt with in accordance with the IPA.

14 Use of information

14.1 Principal's property

- (a) All Offers submitted by a Tenderer become the property of the Principal and will not be returned to the Tenderers.
- (b) This ITO and all documents, information, drawings, specifications, technical information and other material and information provided to a Tenderer (whether before or after the issue of this ITO):
 - (i) remain the property of the Principal
 - (ii) must only be used for the purpose of preparing a Offer and for no other purpose
 - (iii) must not be disclosed to any person other than to a person who is assisting the Tenderer in preparing its Offer; and
 - (iv) must be returned by an unsuccessful Tenderer to the Principal within 7 days of being requested to do so by the Principal.

14.2 Intellectual property

- (a) All intellectual property rights which exist in information contained in this ITO or any related material will remain the property of the Principal but the Tenderer is permitted to use that information and material for the purpose only of compiling its Offer.
- (b) Each Tenderer licences the Principal and its officers, employees, agents, advisers and representatives to copy, adapt, amend, disclose or do anything else necessary (in the Principal's absolute sole discretion) to all material (including that which contains intellectual property rights of the Tenderer or other persons) contained in its Offer for the purpose of the Principal's consideration or evaluation of that Offer and the Tenderer, negotiating any contract for the Supply with the successful Tenderer (if this Invitation Process proceeds to that stage) and this Invitation Process generally.

14.3 Confidential information

- (a) Subject to Clause 14.3(b), the Tenderer must keep strictly confidential all documents in connection with its Offer (including this ITO), the matters discussed with the Principal in connection with the Invitation Process and the Tenderer's Offer, all correspondence in connection with the Invitation Process and the Tenderer's Offer and any other information obtained by the Tenderer in the course of or in connection with the Invitation Process.
- (b) The Tenderer must obtain the prior written consent of the Principal to disclose any information referred to under Clause 14.3(a).

15 Governing law and jurisdiction

The Invitation Process is governed by the laws in force in Queensland. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland and the courts of appeal from them.

16 Interpretation

In this ITO:

- (a) the singular includes the plural and vice versa and a gender includes other genders
- (b) a reference to a party is to be construed as a reference to a party to this ITO and includes its successors and permitted assigns
- (c) if a Tenderer comprises two or more parties, their obligations and liabilities under or arising out of this Invitation Process will be joint and several
- (d) a reference to an item in a clause, schedule, annexure or appendix is a reference to an item in the clause or schedule, annexure or appendix to this ITO and references to this ITO include its schedules and any annexures
- (e) where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings
- (f) a reference to a document or agreement (including this ITO) includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time
- (g) in the interpretation of this ITO, headings are to be disregarded
- (h) no rule of construction or interpretation applies to the construction or interpretation of this ITO to the disadvantage of the Principal on the basis that the Principal prepared this ITO or any part of it
- (i) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it; and
- (j) the words 'including' and 'includes' and any variants of those words, will be read as if followed by the words 'without limitation'.

17 Definitions

In this ITO:

Closing Date means the time and date specified in the Quotation Form by which Offers must be submitted by the Tenderer and received by the Principal.

Conditions of Contract means the Short Form Conditions of Contract relevant to the Offer, copies of which can be located on the Principal's website at cityofgoldcoast.com.au.

Conforming Offer means an Offer that complies with Clause 4.1.

Contact Officer means the person specified in the Quotation Form.

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 this ITO and/or Offer, the evaluation of Offers and the subsequent acceptance or rejection of Offers.

ITO and Invitation to Offer means the documents issued by the Principal inviting Offers for the carrying out of the Supply, including the Principal's Requirements, the Quotation Form, the Response Forms and the documents set out in the Quotation Form and these Short Form Conditions of Offer.

Legislative Requirements includes:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory applicable to the Supply
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Supply and
- (c) fees and charges payable in connection with the foregoing.

Non-Conforming Offer means an Offer that is not a Conforming Offer.

Offer means an Offer submitted by a Tenderer in accordance with this ITO and may include a Non-Conforming Tender.

Price means the rates or prices specified in the Tenderer's Offer and the Quotation Form for which the Tenderer offers to carry out the Supply.

Principal means the Gold Coast City Council ABN 84 858 548 460 of 8 Karp Court, Bundall, Queensland 4217.

Principal's Requirements mean the documents created by or on behalf of the Principal and included in this ITO, or otherwise provided by the Principal prior to accepting an Offer, setting out the Supply which may be required to be carried out by the successful Tenderer. The Principal's Requirements will form the basis of the Contract.

Quotation Form means the Short Form Quotation Form issued by the Principal as part of this Invitation Process.

Response Forms means the Short Form Response Forms issued by the Principal as part of this Invitation Process.

Site means the site at which the Supply is to be delivered or performed.

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

Tenderer means the entity that participates in the Invitation Process, whether or not they submit an Offer.