

Conditions of Contract Consultancy Services

Unless implied to the contrary, all directions in the Invitation are addressed to the Offeror and all directions in the Contract to the Consultant.

DEFINITIONS

The following definitions in addition to those contained in section 1 of the Conditions of Offer, apply to this Invitation and the Contract: **'Contract Officer'** means the person nominated by the Principal to be the sole point of contact during the Invitation process.

'Contract' means the agreement in writing between the Principal and the Consultant including these Conditions of Contract.

'Consultant' means the successful Offeror appointed in writing by the Principal to perform the Consultancy Service and that entity's executors or successors and permitted assigns.

'Consultancy Service' or **'Service'** means the whole of the Service to be executed and completed in accordance with the Contract, including all variations provided for by the Contract, which by the Contract is to be handed over to the Principal.

'Contract Material' means all material which is created in connection with, or for the purposes of performing, the Consultancy Service.

'Council Contract Representative' (CCR) means the person nominated by the Principal to exercise the functions of the Principal relating to the Contract, or other person nominated from time to time by the Principal.

'Intellectual Property Rights' means any patent, registered design, trade mark or name, copyright or other protected right.

'Invitation to Offer' or **'Invitation'** means the documentation issued by the Principal inviting Offers for the provision of the Consultancy Service.

'Lump Sum' or **'Lump Sum Fixed Fee'** means a single fee that includes all costs associated with the Consultancy Service.

'Milestone' or **'Milestone Fixed Fee'** means fees based on project milestones that when summated include all costs associated with the Consultancy Service.

'Notice' means a Notice in writing which may be given by personal delivery, pre-paid postage, email or facsimile.

'Offer' means an Offer submitted by an Offeror in response to the Invitation, including subsequent modifications.

'Offeror' means the entity specified in the Consultancy Service Quotation Form who submits an Offer and in the case of a joint Offer includes each Offeror.

'Principal' means the Council of the City of Gold Coast a local government within the meaning of the *Local Government Act 2009*.

'Response Form' means the Response Forms which form part of the Contract.

'Separable Part' means a part of the Consultancy Services that may be awarded to separate Consultants.

'Site' means the location where the Consultant is to provide the Consultancy Service.

'Sub-consultant' means an individual or company engaged by the Consultant to perform a specific task or tasks as part of the Consultancy Service.

A. CONDITIONS OF OFFER

- A1.** The Council of the City of Gold Coast Conditions of Offer will govern the invitation process. The Council of the City of Gold Coast Conditions of Offer are located on the City of Gold Coast website: cityofgoldcoast.com.au
- A2.** The Principal reserves the right to issue amended Conditions of Offer during the invitation process.
- A3.** It is the responsibility of the tenderer to familiarise themselves with the current Conditions of Offer.

B. CONDITIONS OF CONTRACT CONSULTANCY SERVICES

B1. GOVERNING LAW

The Contract will be governed by and construed in accordance with the law of Queensland.

B2. RESPONSIBILITIES AND OBLIGATIONS OF THE PRINCIPAL

The Principal will:

- pay in accordance with the Contract
- give timely directions, decisions and information sufficient to facilitate the provision of the Service
- provide such access to premises or Sites of the Principal as reasonably necessary to carry out the Service.

B3. CONSULTANT RESPONSIBILITY

- Complete the Consultancy Service including documentation of the Services in accordance with the Contract and all relevant legislative requirements
- exercise the degree of skill, care and diligence expected of a competent professional in carrying out the Consultancy Service.
- ensure Consultancy Service will comply with the Contract and will in all respects be fit for the purpose specified in the Invitation
- acknowledge that the Principal is relying on the Consultant's skill and expertise in undertaking the Consultancy Services.

B4. PERFORMANCE and EXECUTION OF SERVICES

In performing the Services:

- undertake the Service in accordance with the Contract and any other documents issued by the Principal
- unless otherwise provided, remain responsible for all things, including items not expressly mentioned in the Contract necessary for satisfactory completion of the Service
- comply with the directions of the Principal given pursuant to a provision of the Contract
- comply with all legislative requirements in carrying out the Service
- attend meetings and briefings reasonably required by the Principal

- proceed with the Services with due expedition and without delay
- ensure that materials or standards of workmanship as the case may be, are of a kind which is suitable for its purpose and is consistent with the nature and character of the Service.

The documents forming the Contract are mutually explanatory and anything contained in one but not in another is equally binding as if contained in all.

B5. PERSONNEL

Ensure that Services are performed by the key personnel nominated, if any, and that there is no substitute of such personnel without the Principal's consent.

B6. WORK HEALTH AND SAFETY ACT 2011

For the purposes of this clause:

'Act' means the *Work Health and Safety Act 2011*, as amended from time to time.

'Consultancy Service' means the Service performed, or to be performed, by the Consultant as part of the project.

'Regulation' means the *Work Health and Safety Regulation 2011*, as amended from time to time.

'Workplace', 'Inspector', 'Notifiable Incident', 'Principal Contractor' and 'Regulator' have the same meaning as in the Act.

- B6.1** In relation to the Works to be executed under this Contract comply with and discharge all obligations imposed on the Consultant by the Act, the Regulation and any other regulation in connection with health and safety including without limitation on a person who conducts a business or undertaking.

B7. ENVIRONMENTAL MANAGEMENT

At all times during the course of the Contract comply with the requirements of the *Environmental Protection Act 1994*.

B8. PROTECTION OF PERSONS AND PROPERTY

Take all measures to protect people and property, avoid unnecessary interference with the passage of people and vehicles and prevent nuisance and unreasonable noise and disturbance. In the event of any damage to any property, including services, provide timely temporary protection for, and repair of, at the Consultant's expense.

B9. TIME FOR COMMENCEMENT

Commence Services under the Contract within the time stated in the Contract Header and, unless otherwise permitted, give at least two days notice to the Principal prior to the commencement of Service.

B10. TIME FOR COMPLETION

Execute the Service to completion by the time for Practical Completion or within any extended time agreed in writing by the Principal. The Consultant is not entitled to an extension of time for delays caused by it whether occurring before or after the time for completion, nor for delays due to inclement weather or industrial conditions occurring after the time for completion. At its discretion, the Principal may extend the time for completion.

B11. VARIATIONS

The Principal may direct in writing a variation to the Contract to vary the Consultancy Services in nature, scope or timing including the omission or reduction of any part of the Consultancy Services and the Consultant shall be bound to comply. No payment will be made unless the variation is authorised in writing.

B12. INTELLECTUAL PROPERTY

Title to and ownership of Intellectual Property Rights, including copyright, in all Contract material must upon its creation vest in the Principal.

Intellectual Property Rights in any original ideas, equipment, processes or systems created outside the terms of the Contract and used in carrying out the Services are retained by the Consultant. Grant to the Principal an irrevocable license to use such Intellectual Property Rights for any purpose for which the Services are provided.

To the extent that intellectual Property Rights in or relating to the Contract material are not capable of being vested in the Principal because the Consultant does not own that intellectual Property Right, ensure that the Principal is irrevocably licensed to use that intellectual Property Right.

This clause survives the termination or expiration of the Contract.

B13. SUSPENSION, DEFAULT and TERMINATION

B13.1 Suspension

The Principal may, at any time by prior written Notice, suspend the carrying out of the Services or any part thereof. The Principal will not be liable for any compensation for loss of profits or any other reason in relation to a suspension.

B13.2 Termination due to default

If a breach of Contract is committed payment may be suspended and an immediate written Notice to show cause may be issued.

If, by the time specified in the Notice to show cause, the Consultant fails to show reasonable cause to the satisfaction of the Principal, the Principal may, by further written Notice terminate the Contract.

B13.3 Termination without cause

The Principal may terminate the Contract at any time at its sole discretion and for any reason by giving five working days prior written Notice.

The Principal will be liable for fees and reimbursable expenses reasonably incurred up to the date of termination, together with any costs and expenses reasonably incurred by reason of the termination.

The Principal will not be liable for payment for any compensation relating to loss of profit, revenue, goodwill or business opportunities, damage to reputation or for any indirect or consequential loss or for any other reason in relation to termination.

B13.4 Immediate termination

The Principal may immediately terminate the Contract by Notice if the Consultant:

- (a) breaches of any part of Clause B6 or Clause B15
- (b) becomes insolvent or bankrupt or being a company goes into liquidation or has instituted against it any action or proceeding which has an object or may result in bankruptcy or liquidation
- (c) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets or becomes subject to any form of external administration
- (d) enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors
- (e) is wound up, voluntarily or involuntarily
- (f) indicates that it is unable or unwilling to complete the Contract.

B13.5 Rights on Termination

If the Contract is terminated pursuant to subclauses B13.3 or B13.4, the rights and liabilities of the Consultant and the Principal will be the same as they would have been at common law had the Consultant repudiated the Contract and the Principal had elected to treat the Contract as at an end and recover damages.

B14. RISK AND INDEMNITY

Release, discharge and indemnify the Principal and each of its officers and employees ('the Indemnified Persons') from and against any claim which may be brought against or made upon or incurred by any of them in connection with any:

- (a) negligent or unlawful act or omission
- (b) breach of the Contract
- (c) loss of or damage to the Principal's property
- (d) claims by any person in respect of injury, death or loss of or damage to any property
- (e) contravention of any legislative requirement;
- (f) infringement of the Intellectual Property Rights or moral rights of any third party,

by the Consultant, its officers, employees, agents or Sub-consultants, except to the extent the claim is due to the negligent or unlawful act or omission of the Indemnified Persons.

This clause survives the termination or expiration of the Contract.

B15. INSURANCE

Hold and maintain for the Contract term the following insurances:

- (a) public liability insurance for the amount specified in the Contract Header
- (b) professional indemnity insurance for the amount specified in the Contract Header
- (c) insurance of employees (Workcover)
- (d) any other insurances specified.

The insurances must be affected with an insurer that is authorised and licensed to operate in Australia.

If requested, promptly provide a certificate of currency for each insurance policy.

Immediately advise the Principal if any insurance policy, as required by this clause, is materially modified or cancelled.

The Principal accepts a limit on indemnity liability by the Consultant subject to law, for the amount specified in the Contract Header.

This clause survives the termination or expiration of the Contract.

B16. CONFIDENTIALITY

Any business related information, data or application systems, code and documentation disclosed or provided by the Principal:

- (a) must not, without the prior written consent, be disclosed to any person
- (b) must not be used for any purpose other than that for which it was provided
- (c) must, on the written request, be returned.

B17. INFORMATION PRIVACY ACT

In this clause, 'Personal Information' is information or an opinion, including information or an opinion forming part of a database, whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.

If Personal Information is collected or accessed in order to carry out Services under the Contract, the Consultant must:

- (a) if the Principal is an 'agency' within the meaning of the *Information Privacy Act 2009* (IPA), comply with Parts 1 and 3 of Chapter 2 of the IPA in relation to the discharge of its obligations under the Contract as if the Consultant was the Principal
- (b) not use Personal Information other than in connection with carrying out Services under the Contract, unless required or authorised by law
- (c) not disclose, or transfer outside of Australia, Personal Information without the prior written consent of the Principal, unless required or authorised by law
- (d) ensure that its officers, employees, agents and Subconsultants do not access, use or disclose Personal Information other than in connection with carrying out Services under the Contract
- (e) fully co-operate with the Principal to enable response to applications for access to, or amendment of, a document containing an individual's Personal Information and to privacy complaints
- (f) comply with such other privacy and security measures as the

Principal may reasonably require from time to time.

On request by the Principal, obtain from employees, officers, agents or Sub-consultants carrying out Services under the Contract, an executed deed of privacy in a form acceptable to the Principal.

Immediately notify the Principal on becoming aware of any breach of Clause B17.

This clause will survive the termination or expiry of the Contract.

B18. ASSIGNMENT AND SUBCONTRACTING

Services under the Contract, any part thereof, or any payment, must not be assigned without the prior written approval of the Principal.

If requested, notify the Principal in writing of the name and details of any Subconsultant and the value of the subcontract.

Do not, without the prior written approval of the Principal, subcontract Services under the Contract.

The Principal may, in its entire discretion and without giving reasons, reject any such requests.

B19. DISPUTES

Within 14 days of receipt of a Notice of dispute the Consultant may refer it to the Principal's Representative for reconsideration. Within 28 days of receiving a Notice of dispute, the Principal's Representative will give its written decision to the Consultant. If the Principal's Representative fails to give the decision, or if either Party is dissatisfied with it, the parties must within 14 days of receipt of the decision, or the date upon which it should have been given, or earlier by agreement of both parties, confer at least once to attempt to resolve the dispute. At any such conference, each party must be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved within 30 days after the Principal's Representative has given a decision, the dispute then may be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules.

B20. PAYMENT

Submit payment claims at the time(s) stated in the Contract Header or if no times are stated, on a monthly basis, in the form of a tax invoice that complies with the provisions of *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

In the case of expenses not described in the price submission, reimbursement will be made only if the Principal's written consent has been obtained prior to the expense being incurred.

The Principal will pay the amount claimed or such other amount it reasonably determines is due and payable, within 30 business days of receipt of a payment claim.

Payment of moneys will not be evidence of the value of Services or an admission of liability or evidence that Services have been executed satisfactorily but will be a payment on account only. The Principal may, in a later payment, correct an error in a previous payment. Nothing in this Contract will oblige the Principal to pay for Services that are not in accordance with the Contract.

B21. GST AND PAYG

B21.1 GST excluded in price. Payments for any taxable supplies under the Contract include GST.

B21.2 Tax Invoices

(*Alternative 1 applies for all Contracts unless otherwise advised by the Principal)

Alternative 1 - Supplier Created Tax Invoices

Issue to the Principal a tax invoice or adjustment note (as the case may require) within five business days after each of the following occurring in relation to that taxable supply:

- (a) submitting a claim for payment that is not in the form of a valid tax invoice
- (b) the Principal certifying an amount for payment different to the amount claimed
- (c) the amount for payment being otherwise determined to be different to the amount claimed or (if applicable) certified.
- (d) submit claim for payment to acctspayable@goldcoast.qld.gov.au.

Alternative 2 – Recipient Created Tax Invoices:

- (a) tax invoices and adjustment notes required must be issued by the Principal (and not the Consultant)
- (b) notify the Principal immediately it becomes aware of an adjustment event occurring
- (c) each party acknowledges it was registered for GST when it entered into the Contract and agrees it will notify the other immediately it becomes aware of it ceasing to be registered for GST.
- (d) submit claim for payment to ContractsAdminES@goldcoast.qld.gov.au for all the Principal's Works excluding the Principal's Gold Coast Water directorate. Submit claim for payment to GCWContractSupport@goldcoast.qld.gov.au for the Principal's Gold Coast Water directorate.

B21.3 PAYG Withholding

Whenever the Principal reasonably considers itself bound by law to do so, the Principal will be entitled to withhold from any payment otherwise due, amounts calculated and to be withheld in accordance with the law.

The parties agree to exchange with each other such information as may be necessary to enable each party to accurately assess its rights and obligations under this clause.