

Conditions of Contract for Minor Works and Services

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

DEFINITIONS

The following definitions in addition to those contained in section 1 of the Conditions of Offer, apply to this Invitation and the Contract:

'Contact Officer' means the person nominated by the Principal to be the sole point of contact during the Invitation process.

'Contract' means the legally binding agreement in writing between the Principal and the Contractor including these Conditions of Contract.

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

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

'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.

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

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

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

'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 who submits an Offer and in the case of a joint Offer includes each Offeror, and has the same meaning as Tenderer in the Conditions of Offer.

'Practical Completion' means the Work under the Contract is complete in accordance with the Contract except for minor omissions and defects which will not, and the rectification of which will not, prevent or impair the normal use and occupation of the Works.

'Principal' means the Council of the City of the 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 Services that may be awarded to separate Contractors.

'Site' means the location where the Contractor is to provide the Works.

'Subcontractor' means an individual or company engaged by the Contractor to perform a specific task or tasks as part of the Works.

'Superintendent' means the person nominated by the Principal to exercise the functions of the Superintendent under the Contract. The Superintendent may appoint a representative to exercise any of its powers, duties, discretions and authorities.

'Work(s)' or **'Service(s)'** means the whole of the Work or 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.

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 MINOR WORKS AND 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 Works
- provide such access to premises or Sites of the Principal as reasonably necessary to carry out the Works.

B3. PERFORMANCE and EXECUTION OF WORKS

In performing the Works:

- undertake the Work 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 Works
- comply with the directions of the Principal given pursuant to a provision of the Contract
- comply with all legislative requirements in carrying out the Works
- attend meetings and briefings reasonably required by the Principal

- proceed with the Works 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 Works
- unless otherwise specified, ensure all materials are new and workmanship is in accordance with the relevant manufacturer's recommendations or, if none, the relevant Australian Standard where applicable
- allow the Superintendent to examine and/or test materials or Work. Comply with direction by the Superintendent to remedy Work within the period of time stipulated in the Notice. Failure to comply may lead the Principal to have rectification work carried out by others at the Contractor's expense or may accept the Work at a reduced value. The Principal may deduct the costs from payments due until such time as the Principal has incurred the cost of rectification.

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.

B4. PERSONNEL

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

B5. 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.

'Work' means the Work performed, or to be performed, by the Contractor 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.

B5.1 In relation to the Works to be executed under this Contract:

- comply with and discharge all obligations imposed on the Contractor 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
- accept management and control of the Workplace at which the Works are being undertaken in relation to the construction of the Work unless stipulated differently in the annexure
- discharge the duties of a person who conducts a business or undertaking under the Regulation.

B5.2 If a Notifiable Incident occurs at the Workplace at which the Works are being undertaken:

- immediately notify the regulator, the Council Contract Representative and the Superintendent of the Notifiable Incident
- take all reasonably practicable steps to secure the area where the Notifiable Incident occurred until an inspector arrives at the area or any earlier time that an inspector directs.

B5.3 Without limiting any other obligation under this Contract, the Act, the Regulation or any other regulation, if material that might contain asbestos or other hazardous substance is discovered:

- immediately notify the Superintendent and the Council Contract Representative
- comply with all applicable obligations and restrictions imposed by the Act, the Regulation and any other relevant regulation.

B5.4 If and when required by the Principal (or the Superintendent in Contracts utilising such), the Contractor must allow parties nominated by the Principal (which may be the Principal's staff or external contractors) to enter and obtain all and any records and documents pertaining to WHS issues, and to audit the Contractor's work methods and systems. The Contractor must provide those persons with all and any assistance, information and answers as may be sought.

B5.5 The work performed under the preceding clause may give rise to the Principal wishing to issue corrective action Notices. In addition to any other avenues available under the Contract:

- the Principal (or Superintendent) may direct the Contractor, by written Notice, to carry out any required corrective action within the time specified in the Notice, or
- the Principal may, if urgent action is necessary to protect people or property and the Contractor fails to take such action, take such action itself. The costs the Principal incurs will be a debt due from the Contractor.

B5.6 If such a direction is given, inform the CCR or Superintendent in writing immediately upon completion of the corrective actions.

B6. ENVIRONMENTAL MANAGEMENT

At all times during the course of the Contract comply with the requirements of the *Environmental Protection Act 1994*. Implement and maintain measures to preserve and protect the natural environment on and adjacent to the Site.

B7. 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 Contractor's expense.

B8. CARE OF WORK AND REINSTATEMENT OF DAMAGE

If loss or damage occurs to the Work under the Contract, the Contractor must at its own expense, rectify such loss or damage except loss or damage caused by the negligent act or omission of the Principal, or employees or agents of the Principal.

B9. CLEANING OF SITE

Keep the Site and the Works clean and tidy and regularly remove from the Site rubbish and surplus material arising from the execution of the Works. On completion of the Works clear away and remove from the Site all constructional plant, surplus materials, rubbish and temporary Works of every kind.

B10. TIME FOR COMMENCEMENT

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

B11. TIME FOR COMPLETION

Execute the Work to completion by the time for Practical Completion or within any extended time agreed in writing by the Principal. The Contractor 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.

The Principal's entitlement to retention moneys (if any) must be reduced to the percentage provided for in the Annexure or, if no percentage is stated, to 50 per cent thereof, when Practical Completion is achieved as certified by the Superintendent.

B12. VARIATIONS

The Superintendent may direct in writing a variation to the Contract. The variation will be valued by agreement between the Contractor and the Superintendent or failing agreement, by the Superintendent, and the Contract price adjusted accordingly. No payment will be made unless the variation is authorised in writing.

B13. LATENT CONDITIONS

If physical conditions are discovered on the Site or its surroundings, excluding weather conditions, which differ materially from those which should reasonably have been anticipated at the time of Offer if it had:

- (a) examined all information made available in writing by the Principal for the purpose of Offering
- (b) examined all information relevant to the risks, contingencies and other circumstances having an effect on the Offer and obtainable by the making of reasonable enquiries
- (c) inspected the Site and its surroundings.

Immediately notify the Superintendent in writing. A variation may be directed pursuant to clause B12.

The Superintendent may issue a direction in respect of the latent condition, and the Contractor may be entitled to claim an extension of time for delays, and may be entitled to reimbursement of costs incurred as a consequence of the latent condition and directions issued in respect thereof.

B14. LIQUIDATED DAMAGES

Failure to complete the Works by the date for Practical Completion together with any extensions of time granted by the Superintendent, will leave the Contractor liable to the Principal for liquidated damages in the amount stated in the Annexure for every day after that date until Practical Completion has been achieved or the Contract terminated, whichever is sooner.

B15. DEFECTS LIABILITY PERIOD

Promptly rectify all defects and omissions notified during the defects liability period stated in the Annexure. Failure to do so may require the Principal to have the omission or defect remedied by other persons and the cost so incurred may be deducted from payments.

B16. SUSPENSION, DEFAULT and TERMINATION

B16.1 Suspension

The Principal may, at any time by prior written Notice, suspend the carrying out of the Service 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.

B16.2 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 Contractor fails to show reasonable cause to the satisfaction of the Principal, the Principal may, by further written Notice terminate the Contract.

B16.3 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.

B16.4 Immediate termination

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

- (a) breaches of any part of clause B5 or clause B18

- (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
- (g) fails to hold a current license required to perform the Service.

B16.5 Rights on Termination

If the Contract is terminated pursuant to subclauses 16.2 or 16.4, the rights and liabilities of the Contractor and the Principal will be the same as they would have been at common law had the Contractor repudiated the Contract and the Principal had elected to treat the Contract as at an end and recover damages.

B17. 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 Contractor, its officers, employees, agents or Subcontractors, 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.

B18. INSURANCE

The Principal will arrange and maintain in the names of the Principal, the Superintendent and the Contractor a Contractors Works Insurance policy. The Contractor hereby acknowledges and agrees that he has, prior to executing this contract, satisfied himself as to the provisions of the Policy taken out by the Principal and that he accepts the same.

For a copy of the Principal Controlled Contract Works Insurance please refer to the Principals internet website at www.goldcoast.qld.gov.au/council/tenders.html.

The Contractor must hold and maintain for the Contract term the following insurances:

- (a) public liability insurance for the amount specified in the Annexure
- (b) insurance of employees (Workcover)
- (c) 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.

This clause survives the termination or expiration of the Contract.

B19. 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.

B20. 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 Work under the Contract, the Contractor 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 Contractor was the Principal
- (b) not use Personal Information other than in connection with carrying out Work under the Contract, unless required or authorised by law
- (c) not disclose, or transfer outside of Australia, Personal Information without the prior written consent of the Principal, unless required or authorised by law
- (d) ensure that its officers, employees, agents and Subcontractors do not access, use or disclose Personal Information other than in connection with carrying out Work 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 Subcontractors carrying out Work 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 B20.

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

B21. ASSIGNMENT AND SUBCONTRACTING

Work 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 Superintendent and Principal in writing of the name and details of any Subcontractor and the value of the subcontract.

Do not, without the prior written approval of the Superintendent, allow a Subcontractor to subcontract Work under the Contract.

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

B22. DISPUTES

Within 14 days of a dispute arising either party may refer it to the Superintendent.

Within 28 days of receiving Notice of a dispute the Superintendent must give its written decision to each party.

If the Superintendent 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, 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 Superintendent 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.

B23. PAYMENT

B23.1 Submit a Correctly Rendered Invoice or undisputed payment claim at the time(s) stated in the Annexure 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.

B23.2 The Principal will pay the amount claimed or such other amount it reasonably determines is due and payable, within 21 business days of receipt of an undisputed claim for payment, or 30 days after receipt of a correctly rendered invoice.

B23.3 Payment of moneys will not be evidence of the value of Work done or an admission of liability or evidence that Work has 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 Work that is not in accordance with the Contract.

B23.4 Goods and Services Tax (GST) included in price. Payments for any taxable supplies under the Contract include GST. The Principal is not required to pay a GST amount, the contractor is to remit the GST amount in accordance with the GCT legislation

B23.5 Tax Invoices

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

Alternative 1- Correctly rendered invoice (Supplier Created Tax Invoices)

Issue to the Principal a correctly rendered 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) tax invoices and adjustment notes required must be issued by the Principal (and not the Contractor)
- (b) notify the Principal immediately it becomes aware of an adjustment event occurring

Alternative 2 – Claim for payment (Recipient Created Tax Invoices):

- (a) submitting an undisputed 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) 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.
- (e) The Principal can issue tax invoices in respect of the Goods and/ or Services provided by the Contractor under or in association with this Contract; and
- (f) The Contractor will not issue tax invoices in respect of these Goods and/ or Services.

B23.6 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.