



# Managing Contractor – Design and Construction Management – Stage One with option for Stage Two

## Volume 1 of 4 – Tender Requirements

Project Name

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Project Number

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**Guide note: Delete this guide note**

***The Tender Requirements have been developed by Contract Services, Department of Housing and Public Works, but require completion by the project team to meet project specific requirements. Where this document is being used for a Queensland Government building project, Contract Services should be consulted in accordance with the Building Policy Framework.***

This document has been developed in accordance with the Building Policy Framework.

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## CONDITIONS OF TENDER

### 1. TENDER DOCUMENTS

#### 1.1. Code of Tendering

The Principal has adopted Australian Standard® Code of Tendering (AS4120-1994), as amended by the Tender Documents, as its code of tendering provided that to the extent of any inconsistency between AS4120-1994 and any other document comprising the Tender Documents the other document shall prevail, and (without limitation) particulars of project funding arrangements are confidential to the Principal and the Principal will not be providing particulars of project funding arrangements to the Tenderer contrary to AS4120-1994.

#### 1.2. Interpretation

1.2.1 Meanings assigned to words and expressions in the Conditions of Contract shall apply to those words and expressions in the Tender Documents.

1.2.2 The clause, sub clause, paragraph and sub-paragraph headings in the Conditions of Tender shall not form part of the Conditions of Tender and shall not be used in the interpretation of the Conditions of Tender.

1.2.3 If any part of the Conditions of Tender is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of the Conditions of Tender will not be affected and the Conditions of Tender will read as if the part had been deleted.

1.2.4 In these Conditions of Tender, unless otherwise stated, a reference to a clause or schedule is a reference to a clause or schedule in these Conditions of Tender.

#### 1.3. Definitions

1.3.1 The following definitions shall have effect in respect of the Conditions of Tender only.

1.3.2 In addition to the words and terminology contained in the Conditions of Contract, except where the context otherwise requires:

**Alternative Tender** means a Tender which:

- (a) does not comply in every respect with the requirements of the Tender Documents including (without limitation) the Conditions of Tender; or
- (b) contains provisions not required or not allowed by the Tender Documents;

**Best Endeavours Process** means a process that includes, as a minimum:

- (a) arranging, attending and participating in meetings with relevant parties;
- (b) disclosing relevant information, other than confidential or commercially sensitive information, in a timely way between relevant parties;
- (c) genuinely considering proposals made by another party, and responding in a timely way with reasons for any response given; and
- (d) not engaging in capricious or unfair conduct that undermines the freedom of any party or the process;

**Conforming Tender** means a Tender made on the basis of the Tender Documents for the execution of the whole of the work under the Contract in accordance with the Tender Documents and which:

- (a) complies in every respect with the requirements of the Tender Documents including (without limitation) the Conditions of Tender; and
- (b) does not contain provisions not required or not allowed by the Tender Documents;

**electronic tender system** refers to:

- (a) Queensland Government's supplier portal; or
- (b) another Information System, specified in the Tender Form;

**Information System** means a system for generating, sending, receiving, storing or otherwise processing electronic communications;

**Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

**Invitation to Tender** means either:

- (a) the invitation, notified directly to an Invited Tenderer by the Principal, to submit a Tender for the performance of the work under the Contract; or
- (b) a public notice or advertisement of the invitation by the Principal to parties to submit a Tender for the performance of the work under the Contract;

**Invited Tenderer** means a party who:

- (a) the Principal invited to submit a Tender either directly or indirectly by Invitation to Tender; and
- (b) satisfied the conditions of the Invitation to Tender and the Conditions of Tender at the time of Invitation to Tender and at the Time for close of Tender;

**Minimum Consultancy Services** are those stated in Schedule 5 to the Conditions of Contract.

**Principal's Contact Officer** means the Principal's Contact Officer specified in the Tender Form;

**Tender** means an offer submitted by the Tenderer and includes the documents and details submitted by the Tenderer referred to in:

- (a) clause 7.2;
- (b) clause 9; and
- (c) all other documents and information submitted by the Tenderer unless expressly excluded pursuant to the terms of the Tender Documents;

**Tenderer** means a party who submitted a Tender in response to the Tender Documents and includes an Invited Tenderer;

**Tender lodgement address** means the address described as such in the Tender Form;

**Time for close of Tender** means the Time for close of Tender stated in the Tender Form, or if an addendum has been issued changing the Time for close of Tender, the Time for close of Tender stated in the addendum.

## 2. PARTIES BOUND

By receiving a copy of the Tender Documents or submitting a Tender in response to the Invitation to Tender and Tender Documents, that party agrees and the Principal agrees to be bound by and shall comply with the terms of the Tender Documents.

## 3. TENDERER PREQUALIFICATION AND REGISTRATION

As a condition of the Invitation to Tender and a condition precedent to the consideration, evaluation and acceptance of the Tender, the Tenderer is required to hold status as a registered Pre-Qualified contractor with the Prequalification (PQC) System for the PQC Rating and Registration Category relevant to the

proposed Contract as stated in the Invitation to Tender prior to being issued Tender Documents and at the Time for close of Tender and at the Date of Acceptance of Tender.

#### **4. COMMUNICATIONS WITH THE PRINCIPAL**

- 4.1 Unless otherwise agreed with the Principal's Contact Officer identified in the Tender Form, all communications between the Tenderer and the Principal upon which the Tenderer intends to rely for the purposes of its Tender shall be in writing and addressed to or issued by the Principal's Contact Officer.
- 4.2 The Principal will not be bound by, and the Tenderer may not rely upon, any oral advice or information nor any written advice or information provided by any person other than the Principal's Contact Officer.
- 4.3 The Tenderer shall not communicate with any person or corporation who is the intended owner, occupant, operator or manager of the facility the subject of the Tender except with the express permission of the Principal's Contact Officer.

#### **5. TENDER DOCUMENTS**

##### **5.1. Composition and Availability**

###### **5.1.1 "Tender Documents" comprise:**

- (a) The Invitation to Tender;
- (b) the Tender Form;
- (c) Volume 1 of 4 – Tender Requirements, including these Conditions of Tender and the Conditions of Tender – Schedules;
- (d) Volume 2 of 4 – Conditions of Contract;
- (e) Volume 3 of 4 – Conditions of Contract – Schedules;
- (f) Volume 4 of 4 – Project Brief;
- (g) the Australian Standard® Code of Tendering (AS4120-1994) as amended by these Conditions of Tender;
- (h) any documents or parts of documents expressly referred to in the Tender Documents; and
- (i) any other document provided to the Tenderer by or on behalf of the Principal for the purpose of making a Tender;
- (j) but excluding the Notice to Tenderers and any other document or part thereof which is expressly stated to be excluded from the Tender Documents.

5.1.2 To the extent of any discrepancy or inconsistency between these Conditions of Tender and AS4120-1994, these Conditions of Tender shall prevail.

5.1.3 An electronic copy of the Tender Documents (excluding AS4120-1994) is available at the electronic address stated in the Invitation to Tender.

5.1.4 A copy of AS4120-1994 is available at the Standards Australia Webstore, <http://www.standards.org.au>.

##### **5.2. Addenda**

5.2.1 The Principal may at any time issue amendments to the Tender Documents. Such amendments shall be:

- (a) issued in writing;
- (b) issued to all Invited Tenderers; and
- (c) identified as an addendum to the Tender Documents.

**5.3. Confidentiality**

- 5.3.1 All information contained in the Tender Documents which is not in the public domain is to be treated as confidential ("Confidential Information"). Confidential Information contained in the Tender Documents is only to be used for the purpose of preparing the Tender in response to the Invitation to Tender and the Tender Documents.
- 5.3.2 A party issued with Tender Documents:
- (a) must ensure that only appropriate employees and agents have access to the Confidential Information. In all such cases, the party is to inform such employees and agents of the confidential nature of the information and that it must not be disclosed.
  - (b) must not and must ensure that its employees and agents do not at any time disclose such Confidential Information directly or indirectly to any person whatsoever, including without limitation any generative artificial intelligence technology, for any reason, or use or permit it to be used directly or indirectly for any reason.
  - (c) fully indemnifies the Principal against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of disclosure or unauthorised use of Confidential Information by the party, its employees and agents.

**5.4. Discrepancies, Errors and Omissions in the Tender Documents**

Should the Tenderer:

- (a) find any discrepancy, error or omission in the Tender Documents; or
- (b) have any doubt as to the meaning of any portion of the Tender Documents;

it shall forthwith notify the Principal's Contact Officer in writing requesting clarification. Any clarification by the Principal's Contact Officer shall be valid only if issued in writing and may be issued to all Invited Tenderers.

**6. COPYRIGHT AND INTELLECTUAL PROPERTY****6.1. Tender Documents**

- 6.1.1 The Tender Documents shall at all times remain the property of the Principal.
- 6.1.2 All rights of intellectual property, including copyright, in the Tender Documents and other documents supplied to the Tenderer by or on behalf of the Principal are the property of the Principal and shall not be used by the Tenderer for purposes other than the preparation of the Tender except with the prior written approval of the Principal.

**6.2. Tender**

- 6.2.1 All material of any nature whatsoever submitted as the Tender, with the Tender or in relation to the Tender shall remain the property of the Principal.
- 6.2.2 The Tenderer fully indemnifies the Principal against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of any claim by a third party against the Principal alleging that the material contained in the Tender or acts by the Principal in relation to the Principal's use of the Tender material infringe any Intellectual Property Rights of that third party.
- 6.2.3 Intellectual Property Rights in all material submitted by the successful Tenderer in its Tender, is hereby assigned to the Principal upon acceptance of the Tender.
- 6.2.4 To the extent that any material submitted in the successful Tender is the subject of pre-existing Intellectual Property Rights of third parties, the successful Tenderer shall procure an assignment of all such Intellectual Property Rights to the Principal.

- 6.2.5 The Tenderer shall procure all necessary consents or waivers from creators in respect of Moral Rights to allow the Principal to do or authorise any acts or omissions in relation to material submitted by the successful Tenderer in its Tender.

## **7. GENERAL TENDERING REQUIREMENTS & OBLIGATIONS**

### **7.1. Lodgement of Tender**

- 7.1.1 The Tender is required to be submitted to the Tender lodgement address.

7.1.2 For electronic Tenders:

- (a) Subject to clause 7.1.2(c), the Tender shall be submitted in electronic Microsoft Word, Excel or PDF format delivered to the electronic tender system indicated on the Tender Form at Tender lodgement address.
- (b) The Tender shall be deemed to have been delivered to the electronic tender system designated to receive the electronic communications at the date and time stated on the electronic receipt issued to the Tenderer. Any Tender, or part thereof, that has not been delivered to the designated electronic tender system before the Time for close of Tender may be rejected at the discretion of the Principal.
- (c) In the event of:
  - (i) a technical failure of the Tenderer's Information System or of the Principal's electronic tender system, resulting in an inability to submit the Tender in electronic format as required by clause 7.1.2(a); or
  - (ii) a failure of the Principal's electronic tender system to issue an electronic receipt to the Tenderer acknowledging receipt of an electronic Tender from the Tenderer in accordance with clause 7.1.2(a);

the Principal's Contact Officer may, on request by the Tenderer, allow the Tender to be submitted in either hardcopy format, in a sealed envelope, delivered to the tender box location advised by the Principal's Contact Officer, or by email, to the email address advised by the Principal's Contact Officer.

- (d) If a hardcopy or email Tender is submitted pursuant to clause 7.1.2(c), the Tender shall:
  - (i) include the Project Name and Project Number, the Time for close of Tender and the Tenderer's name and address;
  - (ii) state the clause 7.1.2(c) event that caused the Tender to be submitted by hardcopy or email; and
  - (iii) be lodged in the tender box at the location advised by the Principal's Contact Officer by being placed therein, or received by email to the advised email address, before the Time for close of Tender. Hardcopy or email Tenders not in the tender box or email inbox respectively, before the Time for close of Tender may be rejected at the discretion of the Principal.

7.1.3 For hardcopy Tenders:

- (a) The Tender shall be submitted in hardcopy format in a sealed envelope, addressed and delivered to the Tender lodgement address.
- (b) The Tender shall be delivered to the Tender lodgement address by the Time for close of Tender.
- (c) If the Tender, or part thereof, is not delivered to the Tender lodgement address by the Time for close of Tender, it may be rejected at the discretion of the Principal no matter what the reason for the late lodgement.
- (d) Franking machine stamps will not be accepted by the Principal as proof of the date and time of dispatch of a Tender received after the Time for close of Tender.
- (e) A Tender received by a means other than that expressly provided for in these Conditions of Tender will not be considered.

- (f) The Tenderer shall submit all information required pursuant to Schedule 2 – Tender Evaluation as part of the Tender.
- (g) It is the responsibility of the Tenderer to ensure that the Principal is fully aware of the Tenderer's capabilities and shall submit as part of the Tender all information the Tenderer considers necessary to demonstrate its capabilities.

## 7.2. Composition of the Tender

### 7.2.1 The Tenderer shall lodge as the Tender:

- (a) all:
  - (i) Tender Forms; and
  - (ii) relevant schedules and other parts of the Tender Documents which are required to be completed or provided by the Tenderer,

fully and accurately completed;

- (b) the information and details required by the Tender Documents, including without limitation the Tender evaluation criteria set out in Schedule 2 – Tender Evaluation; and
- (c) all other information the Tenderer considers necessary to demonstrate its capabilities pursuant to clause 9.2 and necessary to clarify its Tender.

### 7.2.2 Where a schedule of technical details is required to be lodged as part of the Tender, the Tenderer shall, when requested by the Principal, promptly provide such additional information, by way of further details, illustrations, catalogues, brochures and the like, as may be necessary to fully describe the Tender.

### 7.2.3 The Tenderer shall:

- (a) sign the Tender personally or, affix its common seal on the Tender Forms in the manner prescribed in its articles of association or otherwise have the Tender formally and appropriately signed; and

- (b) have the Tender witnessed and dated;

wherever such provision is made.

### 7.2.4 For electronic Tenders, the original Tender shall be submitted electronically as specified in the Tender Form.

### 7.2.5 For hardcopy Tenders, an original Tender, marked "original", plus two (2) complete copies (unless otherwise specified in the Tender Form) of the original Tender shall be enclosed in a sealed envelope or container, endorsed with:

- (a) the Project Name and Project Number;
- (b) the Tenderer's name and address;
- (c) the Time for close of Tender; and
- (d) the Tender lodgement address.

### 7.2.6 The Tenderer will execute, and will ensure relevant parties execute, all documents and all acts and things required by the Principal for the purposes of giving effect to these Conditions of Tender.

### 7.2.7 The Tenderer shall provide such evidence as the Principal may require in relation to the due execution of the Tender.

## 7.3. Tender for the works in respect of Stage One and Stage Two

### 7.3.1 If the Tenderer is awarded a contract, the Principal shall engage the Managing Contractor:

- (a) to execute and complete the work required during Stage One; and



- (b) only if the Principal accepts the Managing Contractor's GCS Offer pursuant to Clause 11.2.1(a) of the Conditions of Contract, to execute and complete the work required during Stage Two.

7.3.2 However, for the avoidance of doubt and notwithstanding any other provision of the Conditions of Tender, there shall not be any award of a Contract in respect of Stage Two, unless and until the Principal accepts the Managing Contractor's GCS Offer pursuant to Clause 11.2.1(a) of the Conditions of Contract.

7.3.3 The Tender is invited on the basis of the Tender Documents.

#### 7.4. **Alternative Tenders**

The Tenderer may, before the Time for close of Tender, submit an Alternative Tender.

#### 7.5. **Tenderer to Inform Itself**

7.5.1 The Tenderer shall satisfy itself that it is a bona fide Invited Tenderer.

7.5.2 The Tenderer shall carry out all relevant investigations, examine, acquaint and satisfy itself with and make due allowance in the Tender for:

- (a) the completeness of the Tender Documents;
- (b) all information which is relevant to the risks, contingencies and other circumstances which could affect the Tender and any subsequent contract and which is obtainable by making reasonable enquiries;
- (c) the extent and nature of all services including but not limited to temporary services necessary to ensure the continuing operation of any existing facility;
- (d) the requirements of Authorities having jurisdiction over the Works;
- (e) the Site and its surroundings including without limitation:
  - (i) all relevant physical conditions above, upon and below surface of the Site and the climatic conditions at and near the Site;
  - (ii) the means of access to and from the Site;
  - (iii) facilities at the Site; and
  - (iv) transport facilities for deliveries to the Site;
- (f) the nature of the work, Constructional Plant and material necessary for the execution of the work under the Contract;
- (g) the correctness and sufficiency of its Tender and that the Tender includes allowance for the cost of performing all the obligations and covenants of the Managing Contractor under the Contract and the cost of completing the work under the Contract in accordance with the terms and conditions of the Contract.

#### 7.6. **Rise and Fall**

The Tenderer shall ensure that the Tender includes all allowances in respect of cost adjustment (Rise and Fall) and escalation in accordance with the Tender Documents.

#### 7.7. **Quality Assurance**

The Tenderer shall submit with the Tender evidence satisfactory to the Principal that the Tenderer can comply with the Quality Assurance requirements of the proposed Contract.

#### 7.8. **Language**

The Tender shall be in the English language. Any documents forming part of the Tender which are in a language other than English shall be accompanied by a translation.

**7.9. Units of Measurement**

Measurements and quantities shall be consistent with the *National Measurement Act 1960* (Cth), or in the absence of any specification therein in accordance with the Australian Metric Tables and Australian Standard AS1000 – The International System (SI) and its application.

**7.10. Order of Tender**

Where practical, the Tender shall be in a bound document. The order of documents making up the Tender shall be:

- (a) the Tender Forms; followed by
- (b) the schedules and other parts of the Tender Documents which are required to be completed or provided by the Tenderer; followed by
- (c) the information and details required by the Tender evaluation criteria set out in Schedule 2 – Tender Evaluation (in the order listed, if any); followed by
- (d) all other information, details or documentation required by the Tender Documents; followed by
- (e) any other information, details or documentation the Tenderer considers necessary to submit with its Tender.

**7.11. Consolidated Tender**

7.11.1 The Principal may invite the Tenderer to resubmit to the Principal its Tender in the form of a consolidated Tender. The Principal may accept a consolidated Tender. The form of the consolidated Tender shall be:

- (a) a complete copy of the original Tender including the Tender Documents together with:
  - (i) all amendments to the original Tender agreed between the Principal and the Tenderer since the submission of the original Tender clearly noted thereon; and
  - (ii) a letter confirming that the original Tender, amended as aforesaid, constitutes the Tenderer's consolidated Tender; or
- (b) copies of Schedules as may have been submitted by the Tenderer in the original Tender or at any time after the submission of the original Tender as the Principal may require:
  - (i) duly revised to incorporate all amendments agreed by the Principal and the Tenderer since the submission of the original Tender; and
  - (ii) clearly marked as superseding all corresponding Schedules previously submitted by the Tenderer, together with:
  - (iii) a letter confirming that the original Tender as amended to incorporate the revised Schedules and any addenda issued by the Principal since the submission of the original Tender constitutes the consolidated Tender.

7.11.2 If requested by the Principal the Tenderer shall provide to the Principal, at no cost to the Principal, three additional copies of the Consolidated Tender.

7.11.3 The Principal shall provide to the Tenderer three additional copies of the Tender Documents and all addenda issued after the submission of the original Tender as considered appropriate by the Principal.

**7.12. Consultants**

7.12.1 Where consultants have been listed in Schedule 1 – Consultants, the Tenderer shall select from, and include in its Tender, allowance to engage consultants selected from those listed for the provision of the Minimum Consultancy Services stated in Schedule 5 to the Conditions of Contract, and for any services in addition to the Minimum Consultancy Services to fulfil its obligations under the Contract.

7.12.2 Pursuant to the Conditions of Contract, the Managing Contractor may engage consultants other than those listed for services in addition to the Minimum Consultancy Services.

7.12.3 Notwithstanding this clause 7.12 and Schedule 1 – Consultants, but subject to clause 8.1(n), the Tenderer shall undertake its own:

- (a) investigations;
- (b) negotiations;
- (c) confirmations; and
- (d) arrangements;

in respect of all consultancy services required by the Managing Contractor to fulfil the obligations of the Managing Contractor under the Contract and shall make all necessary allowances in its Tender.

7.12.4 The Tenderer shall identify at item 8 of the Tender Form:

- (a) all consultants that the Tenderer, as Managing Contractor, will engage to provide the Minimum Consultancy Services stated in Schedule 5 to the Conditions of Contract;
- (b) the scope of consultancy services in addition to the Minimum Consultancy Services the Tenderer, as Managing Contractor, will require to fulfil its obligations under the Contract, together with the names of the consultants intended to be engaged to provide those additional consultancy services; and
- (c) the respective consultants' fees.

7.12.5 If the Tenderer's Tender is accepted by the Principal, the Tenderer acknowledges that if the Principal has paid to a Consultant identified at Schedule 1 – Consultants, any fees included in the minimum Consultants Fee identified on the Tender Form, the Tenderer agrees that the tendered lump sum Consultants Fee accepted by the Principal will be adjusted by the Principal's Representative and reduced by the amount of the additional fees paid by the Principal after issuance of the Tender Documents and prior to acceptance of the Tender.

7.12.6 The Tenderer's acceptance of the consultants listed in Schedule 1 – Consultants (if any) and Minimum Consultancy Services (if any) is prerequisite to the submission of the Tender and subsequent consideration and acceptance of the Tender by the Principal.

7.12.7 The Principal's requirements in respect of consultancy agreements are stated in Clause 18 of the Conditions of Contract.

#### 7.13. **Costed Methodology Statement for On Site Overheads and Management Fee**

The Tenderer must include in its Tender a costed methodology statement for On Site Overheads and for those resources included in the Management Fee, showing full details and individual costings of personnel and other items, that have been allowed by the Tenderer in its Tender for the On Site Overheads Fee and Management Fee respectively. The Tenderer acknowledges that regard may be had to the Tenderer's costed methodology statement for On Site Overheads, and resources included in the Management Fee, in the evaluation of the Tenderer's Tender, in addition to any other Tender evaluation criteria, and in the administration of the Contract.

#### 7.14. **Preferred Subcontractors**

If the Tenderer wishes to involve preferred subcontractors for proposed Subcontracts during Stage One, the Tenderer must identify those subcontractors in its Tender and, if the Principal requires, such preferred subcontractors must be Prequalified Subcontractors prior to any engagement by the Tenderer, should its Tender be accepted, in connection with the work under the Contract.

### 8. **TENDERER WARRANTIES**

8.1 In lodging the Tender, the Tenderer warrants that:

- (a) the Tenderer is in all respects an independent Tenderer and that no collusion has taken place between the Tenderer and any other prospective tenderer or interested party in the preparation of the whole or any part of the Tender;

- (b) that the Tenderer has:
  - (i) carried out all relevant investigations of;
  - (ii) examined, acquainted and satisfied itself with; and
  - (iii) made the necessary allowance in the Tender for;all things in accordance with clause 7.5;
- (c) further to the warranties in clause 8.1(b), the Tenderer has satisfied itself of the adequacy and sufficiency of the Project Construction Cost Estimate for the performance of the work to be required under the Contract having regard to the Tender Documents;
- (d) all information contained in the Tender is accurate;
- (e) it shall maintain the skill and expertise necessary to complete the work under the Contract for the duration of the Contract;
- (f) all persons nominated in the Tender as key personnel will remain working on the project to the extent indicated in the Tender for as long as the persons work for or are employed by the Tenderer unless the Principal otherwise consents in writing;
- (g) it will maintain at adequate levels for the duration of the Contract all resources required for the proper completion of the Work under the Contract in accordance with the Contract including but not limited to:
  - (i) skilled personnel;
  - (ii) finance;
  - (iii) materials;
  - (iv) Constructional Plant; and
  - (v) office and factory buildings and facilities;
- (h) the Intellectual Property Rights to be assigned to the Principal do not and will not infringe the Intellectual Property Rights of any person;
- (i) it, and any consultants the Tenderer proposes to engage or has engaged, have the necessary experience, skill and expertise to perform and complete the work under the Contract as evidenced by the Tender;
- (j) it will fulfil all aspects of the Tender, including without limitation the Tenderer's Tender evaluation criteria offers and offers in relation to the Best Practice Principles;
- (k) it will comply with the Ethical Supplier Threshold, the Ethical Supplier Mandate and the Supplier Code of Conduct;
- (l) it will cooperate with the Principal, the QGP Compliance Branch and any Government Department or Instrumentality for Ethical Supplier Threshold compliance and investigative purposes including, without limitation, providing any requested documents related to the Tenderer's compliance with the Ethical Supplier Threshold;
- (m) it will fulfil all obligations required in respect of Queensland Government policies;
- (n) it has not entered into, and will not enter into, any agreement, arrangement or understanding with any consultant listed in Schedule 1 which would inhibit the ability of that consultant to be engaged by any Managing Contractor who might ultimately be engaged in respect of the project, or affect the terms upon which such consultant might be so engaged; and
- (o) it will give the Principal prior notice of any likely change in circumstances in respect of this clause 8.

8.2 The Tenderer agrees that the foregoing warranties shall form part of the proposed Contract and a breach of any of the foregoing warranties shall be a substantial breach of Contract under the proposed Contract.

## **9. TENDERER ASSESSMENT AND TENDER EVALUATION**

### **9.1. Principal's Discretion**

- 9.1.1 The Principal shall not be bound to consider or accept a Tender lodged by a party who is not a bona fide Invited Tenderer.
- 9.1.2 Notwithstanding the evaluation of Tenders (if any) in accordance with clause 9.2, the Principal may in its absolute discretion and at any time accept, or decline to accept, any Tender.
- 9.1.3 Without derogating from the provisions in clause 9.1.2, the Principal may, in its absolute discretion, decline to evaluate any Tender that it has determined to be an Alternative Tender.
- 9.1.4 The Principal shall not be liable for payment of any costs of any nature whatsoever, nor liable for any claim for damages against the Principal by the Tenderer in relation to the preparation, submission or any negotiation of the Tender. All costs of tendering shall be borne by the Tenderer.

### **9.2. Evaluation and Assessment**

- 9.2.1 The Principal shall evaluate Conforming Tenders in accordance with the Tender evaluation criteria contained in Schedule 2 – Tender Evaluation, or in the absence of any Tender evaluation criteria, on the basis of best value for money for Government determined in accordance with the Queensland Procurement Policy.
- 9.2.2 The Principal, if it determines to evaluate an Alternative Tender, shall evaluate such Alternative Tender on the basis of best value for money for Government determined in accordance with the Queensland Procurement Policy, which may or may not be the Tender evaluation criteria contained in the Tender Documents.
- 9.2.3 Where both Conforming and Alternative Tenders have been evaluated, the Principal may select a Tenderer which on a view of all circumstances represents the best value for money for Government determined in accordance with the Queensland Procurement Policy.
- 9.2.4 Without limiting the generality of clause 9.1.2, and notwithstanding that the Tenderer complies with clause 3, the Tenderer acknowledges and agrees that:
  - (a) The Principal has not at the time of inviting tenders satisfied itself as to the Tenderer's financial capacity to satisfactorily perform and complete the Contract in accordance with its terms.
  - (b) The Principal may undertake an assessment or further assessment of, without limitation, the Tenderer's financial capacity to satisfactorily complete the work under the Contract. The Principal may engage a third party to undertake such assessment or further assessment.
  - (c) The Tenderer shall provide to the Principal, or a third party nominated by the Principal, within the time stipulated by the Principal all information requested in relation to the performance capability, past performance record and financial capacity of the Tenderer to undertake and complete the work under the Contract. A failure to provide the requested information within the time stipulated may result in a decision by the Principal that the Tenderer does not have sufficient financial capacity to satisfactorily perform and complete the Contract in accordance with its terms.
  - (d) The Principal may decline to consider or accept a Tender from a Tenderer who:
    - (i) has not been able to satisfy the Principal that it has sufficient financial capacity to satisfactorily perform and complete the Contract in accordance with its terms; or
    - (ii) prior to the award of Contract, does not hold a Certificate of Prequalification, or is not appropriately registered for the work the subject of the Tender, pursuant to the prequalification (PQC) system current at the Time for close of Tender.
  - (e) The Principal in its absolute discretion may, as a pre-requisite to the further consideration and acceptance of the Tender require the Tenderer to agree in writing, as part of the Tender, to provide additional security pursuant to Clause 9.2 of the Conditions of Contract.

- 9.2.5 Information relating to the financial capacity of the Tenderer to complete the work under the Contract that may be held by any Government Department or Instrumentality may be made available to the Principal for its information and may be taken into account in assessing the financial capacity of the Tenderer.
- 9.2.6 The Tenderer shall not tender alternative Construction Bonus schemes.
- 9.2.7 The Tenderer shall provide such additional information as may be requested by the Principal, including relating to compliance with the Ethical Supplier Threshold and Ethical Supplier Mandate.
- 9.2.8 Information relating to the Tenderer including, without limitation, that relevant to the Tender evaluation criteria and the Tenderer's compliance with Government policies and legislation that may be held by any Government Department or Instrumentality may be obtained by or made available to the Principal and the Tender evaluation panel for its information and verification, for the purposes of Tender evaluation.
- 9.3. **Additional Information**
- 9.3.1 The Tenderer shall upon request assist the Principal in its evaluation of the Tender and assessment of the Tenderer's performance and financial capabilities by providing such further information, documents or evidence as requested.
- 9.3.2 Prior to or after the Time for close of Tender the Principal may require the Tenderer to make a presentation to the Principal and the Principal's agents of the proposals contained in the Tender.
- 9.4. **Tender Evaluation Process**
- 9.4.1 In the evaluation of the Tender (if any) in accordance with clause 9, the Principal may, without being under any obligation to do so, in its absolute discretion and at any time:
- (a) seek clarification in respect of any aspect of the Tenderer's Tender;
  - (b) shortlist or prefer any one or more Tenderer; and
  - (c) discuss or negotiate with, or receive presentations, further submissions or final Tenders from, any one or more Tenderers in respect of their Tender, in such manner, and as to such aspects of the Tender, as the Principal determines, including prices.
- 9.4.2 The provisions of clause 9.4 and any exercise by the Principal of its rights under clause 9.4:
- (a) is without prejudice to any other rights of the Principal;
  - (b) apply notwithstanding clause 6.6 of AS4120-1994;
  - (c) except to the extent notified otherwise by the Principal in writing, are subject to the other express provisions of these Conditions of Tender;
  - (d) shall not give rise to any representation by the Principal as to the acceptability or otherwise of any Tender;
  - (e) shall not preclude the Principal from at any time considering or accepting any Tender (whether or not the subject of the exercise by the Principal of its rights under clause 9.4);
  - (f) shall not give rise to any obligation (implied or otherwise) on the Principal except to the extent expressly provided in these Conditions of Tender or notified by the Principal in writing.
- 9.4.3 Except to the extent the Principal expressly agrees otherwise, the provisions of these Conditions of Tender shall continue to apply to any process which the Principal may undertake under clause 9.4 in connection with the evaluation of the Tenders.

## 10. RIGHT TO INFORMATION AND DISCLOSURE

- 10.1 The *Right to Information Act 2009* (Qld) ("RTI Act") provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies. The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to public interest.

- 10.2 Information contained in the Tender is potentially subject to disclosure to third parties. In the assessment of any disclosure required by the Principal pursuant to the RTI Act, the Tenderer accepts that any information provided in its Tender, including information marked as confidential, will be assessed for disclosure in accordance with the terms of the RTI Act.
- 10.3 Notwithstanding any other provision of the Tender Documents or the Tender, if the Tender is accepted, the Principal may publish on the Queensland Government Marketplace website or by any other means, Contract information including:
- (a) the name and address of the Principal and the successful Tenderer;
  - (b) a description of the goods and/or services to be provided pursuant to the Contract;
  - (c) the date of award of Contract (including the relevant stages if the Contract involves more than one stage);
  - (d) the Contract value (including the value for each stage if the Contract involves more than one stage and advice as to whether any non-price criteria were used in the evaluation of the Tender);
  - (e) the procurement method used; and
  - (f) for contracts with a value over \$10 million, the Contract, or summary information in respect of the Contract, between the Principal and the Contractor.

## **11. DEED OF GUARANTEE, INDEMNITY AND ASSUMPTION**

- 11.1 Where the Tenderer is a related or subsidiary corporation (as defined in the *Corporations Act 2001* (Cth)) the Tenderer shall, within 14 days after receiving a written request from the Principal, provide a Deed of Guarantee, Indemnity and Assumption, in a form acceptable to the Principal, by the corporation to which the Tenderer is a related or subsidiary corporation duly executed and enforceable.
- 11.2 The form of Deed of Guarantee, Indemnity and Assumption included in the Tender Documents is acceptable to the Principal.

## **12. FORMAL INSTRUMENT OF AGREEMENT**

The successful Tenderer and the Principal shall execute a Formal Instrument of Agreement in accordance with the Conditions of Contract. Until a Formal Instrument of Agreement is executed by the parties in accordance with the Contract, documents evidencing the parties' consensus shall constitute the Contract.

## **13. TENDERER'S ACKNOWLEDGEMENT**

The Tenderer acknowledges that notwithstanding:

- (a) the submission of Tender fees for the performance of Stage Two, as part of its Tender; and
- (b) references throughout the Tender Documents to Stage Two;

the Contract to be let upon acceptance of any Tender is for the performance of Stage One only. The scope of work under the Contract may be extended for the performance of Stage Two, only if the Principal accepts the Managing Contractor's GCS Offer pursuant to Clause 11.2.1(a) of the Conditions of Contract.

## **14. COLLUSIVE ARRANGEMENTS**

- 14.1 The Tenderer warrants that in submitting its Tender, except as expressly disclosed in its Tender:
- (a) it has no knowledge of the Tender price of any other Tenderer, nor has it communicated with any other Tenderer in relation to the Tenderer's Tender price, or a price above or below which a Tenderer may tender (excluding any pricing advised by the Principal), nor has it entered into any contract, arrangement or understanding with another Tenderer to the effect that the Tenderer or another Tenderer will tender a non-competitive price, for the work the subject of the Tender, at time of submission of its Tender;



- (b) it has not entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to a trade, industry or other association (above the published standard fee) relating in any way to its Tender or any contract that may be entered into consequent thereon;
- (c) it has not paid or allowed any money or entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to or on behalf of any other Tenderer, nor received any money or allowance from or on behalf of any other Tenderer, relating in any way to its Tender or any contract that may be entered into consequent thereon.

14.2 In addition to any other actions the Principal may take, any breach of the warranties given in this clause will result in a review of the Tenderer's PQC registration status.

## 15. TRUST ACCOUNTS

15.1 In this clause, terms defined by the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) ("BIF Act") as relevant to the operation of Chapter 2 of the BIF Act and used (without separate definition) in this clause, have the meaning given to them by the BIF Act.

15.2 The Tenderer's attention is drawn to:

- (a) Chapter 2 (Statutory trusts) of the BIF Act; and
- (b) clause 58.5 of the Conditions of Contract.

15.3 The Tenderer acknowledges and agrees that if it is the successful Tenderer, it will establish and maintain a project trust account and a retention trust account if and when it is required to do so under the BIF Act and Clause 58.5 of the Conditions of Contract.

## 16. ETHICAL SUPPLIER THRESHOLD

16.1 The Tenderer must comply with the Ethical Supplier Threshold and the Tenderer must provide true and correct responses to the criteria set out in the Ethical Supplier Threshold questionnaire on the Tender Form.

16.2 If, at any time after the Tenderer submits its Tender, the Tenderer's responses to the criteria set out in the Ethical Supplier Threshold questionnaire are no longer true and correct for any reason, the Tenderer must promptly notify the Principal's Contact Officer of the change to the Tenderer's response.

16.3 The Tenderer acknowledges that if, at any time, the Tenderer's response to a criterion set out in the Ethical Supplier Threshold questionnaire on the Tender Form is "yes", the Principal may:

- (a) in accordance with clause 9.1.3, decline to evaluate the Tender, as if it were an Alternative Tender; or
- (b) in accordance with clause 9.1.2, decline to accept the Tender.

## 17. ETHICAL SUPPLIER MANDATE

17.1 The Principal may decline to consider or accept a Tender from a Tenderer who, at the date of submission of the Tender and any time prior to the award of Contract, is subject to a current sanction under the Ethical Supplier Mandate according to the online supplier check tool released and current at the time and date at which Tenders were invited.

17.2 Notwithstanding any other provision of the Tender Documents or a Tender, the Tenderer acknowledges and agrees that the Principal may refer matters about the Tenderer's compliance with the Ethical Supplier Mandate and the Ethical Supplier Threshold to the QGP Compliance Branch which may, in its absolute discretion, publish information about the Tenderer's compliance with the Ethical Supplier Mandate and the Ethical Supplier Threshold including but not limited to information about sanctions and penalties imposed on the Tenderer.



## 18. BEST PRACTICE PRINCIPLES

- 18.1 If the Annexure to the Conditions of Contract indicates that the Best Practice Principles apply, this clause 18 applies.
- 18.2 The Tenderer must complete the Returnable Tender Schedule – BPP Consent and include it with its Tender.
- 18.3 The Best Practice Principles set an expectation that projects will implement:
- (a) best practice workplace health and safety systems and standards; and
  - (b) best practice commitment to apprentices and trainees.
- 18.4 The Tenderer is required to demonstrate in its Tender:
- (a) how it will implement best practice workplace health and safety systems and standards, and best practice commitment to apprentices and trainees; and
  - (b) the Best Endeavours Process by which the Tenderer will use its best endeavours to engage subcontractors who will implement best practice workplace health and safety systems and standards, and best practice commitment to apprentices and trainees.
- 18.5 Any Tender that does not comply with the requirements of this clause 18 will be considered an Alternative Tender.

## 19. WORK HEALTH AND SAFETY ACCREDITATION SCHEME

- 19.1 If stated in the Annexure to the Conditions of Contract, this clause 19 will apply.
- 19.2 For the purposes of this clause:
- builder, building work and WHS Accreditation Scheme** have the same meanings as in the *Federal Safety Commission Act 2022* (Cth).
- 19.3 The successful Tenderer must be accredited under the WHS Accreditation Scheme when entering into contracts for building work. The builder must maintain accreditation while the building work is being carried out.
- 19.4 The successful Tenderer must comply with all conditions of the WHS Accreditation Scheme accreditation.

## 20. PERFORMANCE REPORTING

- 20.1 The Tenderer acknowledges that:
- (a) if the Tenderer is awarded a Contract, the Principal will, in accordance with the Prequalification (PQC) System, prepare and submit performance reports to the PQC Registrar. The performance reports may include, amongst other things, information regarding:
    - (i) achievements or compliance with representations made in response to Schedule 2 – Tender Evaluation to the Conditions of Tender;
    - (ii) compliance with any legislation relating to workplace health and safety, industrial relations, taxation and workers compensation legislation; and
    - (iii) compliance with the provisions of the Contract, including, but not limited to, those clauses concerning Collusive Arrangements (Clause 6), Subcontracting (Clause 21), Occupational Health and Safety Audit (Clause 26.2); Training Policy (Clause 41.4), Site Personnel Register (Clause 41.6) and Payment of Workers and Subcontractors (Clause 58);
  - (b) the Queensland Government has published a document entitled “Building and construction Code of Practice 2000”, previously entitled “Queensland Code of Practice for the Building and Construction Industry” (the Code of Practice). The Tenderer is reminded that by being registered pursuant to the

Prequalification (PQC) System they have provided an undertaking that they will abide by the Code of Practice; and

- (c) an adverse performance report or non-compliance with the Code of Practice will result in a review of the Contractor's PQC registration status.

**SCHEDULE 1 – CONSULTANTS*****Conditions of Tender clause 7.12***

If more than one consultant is listed for a discipline, the Tenderer is to select from the list.

<b>DISCIPLINE</b>	<b>CONSULTANT</b>	<b>MINIMUM FEE</b>	<b>ARRANGEMENTS MADE BY PRINCIPAL</b>
Architects & Primary Consultants		\$.....	
Quantity Surveyors		\$.....	
Mechanical Engineers		\$.....	
Electrical Engineers		\$.....	
Communications		\$.....	
Lift Services		\$.....	
Fire Services		\$.....	
Security Services		\$.....	
Hydraulic Services		\$.....	
Civil Engineers		\$.....	
Structural Engineers		\$.....	
Façade Engineers		\$.....	
Acoustics		\$.....	
[Other Service]		\$.....	

## SCHEDULE 2 – TENDER EVALUATION

### **General**

The Tenderer must demonstrate that its Tender represents value for money for Government determined in accordance with the Queensland Procurement Policy.

The Tenderer must include with its Tender all documents and information required by clause 7.2 of the Conditions of Tender, including without limitation:

- a costed methodology statement for On Site Overheads and Management Fee, as required by clause 7.13 of the Conditions of Tender;
- any preferred subcontractors, as required by clause 7.14 of the Conditions of Tender;
- evidence to demonstrate the Tenderer's ability in respect of each of the Tender evaluation criteria set out in this Schedule 2; and
- if the Annexure to the Conditions of Contract indicates that the Best Practice Principles apply:
  - the Tenderer's response to achieving the best practice principles for the project:
    - best practice workplace health and safety systems and standards; and
    - best practice commitment to apprentices and trainees;
  - details demonstrating how the Tenderer will implement best practice workplace health and safety systems and standards, and best practice commitment to apprentices and trainees, as required by clause 18.4(a) of the Conditions of Tender;
  - details demonstrating the Tenderer's Best Endeavours Process by which the Tenderer will use its best endeavours to engage subcontractors who will implement best practice workplace health and safety systems and standards, and best practice commitment to apprentices and trainees, as required by clause 18.4(b) of the Conditions of Tender; and
  - the completed Returnable Tender Schedule – BPP Consent, as required by clause 18.2 of the Conditions of Tender.

For Tender evaluation purposes only, the tendered Off Site Overheads and Profit Fee for Stage Two (expressed as a percentage) will be applied to the Principal's Project Construction Cost Estimate **contained in the Project Brief**.

### **Principal's Determination**

The Principal shall determine whether a Tender is an Alternative Tender or Conforming Tender and, in doing so, shall have regard to the following, without limitation:

- whether the Tender contains errors of an administrative nature which do not alter the substance of the offer;
- whether the Tender contains clarification of an ambiguity; and
- the extent to which the Tender does not contain all of the documents required by clause 7.2 of the Conditions of Tender.

Without derogating from the provisions of clause 9.1.2 of the Conditions of Tender:

- if, in the opinion of the Principal, the Tenderer fails to demonstrate a satisfactory ability in relation to a Tender evaluation criterion; or
- if the Tenderer receives a point score less than 40% of the highest possible point score for a given Tender evaluation criterion; or
- if the Tender includes tendered fees that are 15% lower than the tendered fees of the next lowest Tender;

the Principal may, in its absolute discretion, decline to evaluate or further evaluate the Tender.

### ***Tender Evaluation Criteria \****

***\*Project Manager to complete this section with project specific requirements for price and non-price evaluation criteria – delete this guide note***

The Tenderer is required to address each of the following:

1	Project Specific Objectives	Sub-Weighting	.....%
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**EXAMPLE [delete before publishing]:** Methodology. Provide further information or refer to the Specification for more details or requirements.

2	Project Specific Objectives	Sub-Weighting	.....%
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EXAMPLE [delete before publishing]: Resource Strategy including key personnel.

3	Project Specific Objectives	Sub-Weighting	.....%
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EXAMPLE [delete before publishing]: Use of local subcontractors and suppliers in accordance with the Queensland Procurement Policy.

### ***Tender Evaluation Criteria Submission Requirements***

The Tenderer is requested to explain how its experience, capability and nominated team will achieve the project's objectives and satisfy the Tender evaluation criteria.

The Tender evaluation criteria submission should:

- be concise;
- contain no more than [project team to insert] pages, with supporting documentation provided in attachments;
- provide an executive summary;
- contain Curriculum Vitae of no more than one page for each nominated key personnel;
- identify and provide contact details for referees who are independent of the Tenderer; and
- be set out in a font size of 11 point normally spaced.

**GUIDE NOTE: [DELETE BEFORE PUBLISHING]**

***The Project Manager is required to amend and complete this Schedule 2 with project specific requirements. For Best Practice Principles projects, the Project Manager should refer to the Queensland Government Best Practice Principles: Quality, safe workplaces guide when completing this schedule.***

**The Project Manager is to ensure that the relevant PQC Rating and Registration Category is stated in the Invitation to Tender, as required by clause 3 of the Conditions of Tender.**