



Term Maintenance Contract

Volume 1 of 3 – Conditions of Tender

Project Name

.....

Project Number

.....

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NOTICE TO TENDERERS

Disclaimer:

- Information provided in this Notice to Tenderers is intended to assist the Tenderer in the preparation of the Tender and may not be inclusive of all the requirements of the Tender Documents.
- The Tenderer shall not rely on this notice to Tenderers.
- The Tenderer shall ensure and satisfy itself that its Tender complies in every respect with the requirements of the Tender Documents.
- Notwithstanding any provision of the Tender Documents to the contrary, the information provided in this Notice to Tenderers does not form part of the Tender Documents and it shall not alter any requirement of the Tender Documents or any obligation, liability or right of the Tenderer, Contractor or Principal.
- The Principal shall not be liable to the Tenderer for any claim, demand, action, proceeding or suit arising out of or in connection with this Notice to Tenderers or the provision of the information contained herein.

INVITATION TO TENDER

The State of Queensland, through [.....] invites you to submit a tender for:

Project Name |
 Project Number |

Guidelines and additional information

Guidelines and additional information are available online regarding:

- the [Queensland Procurement Policy](#) and the [Ethical Supplier Requirements](#);
- the [Queensland Government Building Policy Framework](#) and [Prequalification \(PQC\) System](#);
- the [Queensland Government Building and Construction Training Policy](#);
- the [Project Trust Account framework](#);
- the [Queensland Charter for Local Content](#).

BIF Act

If this is an eligible contract, a project trust account may be required, and a separate retention trust account may be required for holding cash retentions, pursuant to the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).

To support industry, a comprehensive range of tools and materials are available on the [Queensland Building and Construction Commission \(QBCC\) website](#).

[Project specific Notice to Tenderers section]

[Project Managers may insert other applicable sections as appropriate but must not include anything that is to be relied upon in the Contract as this document does not form a part of the Contract. **Delete this section if not required**]

TENDER FORM

PROJECT TENDER INFORMATION [Guide Note: Project Manager to complete – DELETE GUIDE NOTE]			
Principal's Contact Officer:		Phone:	
Email:		Fax:	
Tender lodgement address:	[The Queensland Government Tender Box C/o Decipha Pty Ltd 2 Duncan Street, West End QLD 4101]		(Please ensure that your Tender is in a sealed envelope quoting the Project No. and addressed to the correct Tender Box)
Time for close of Tender:	[2.00 pm on/...../20.....]		
No. of copies of Tender:	Original plus [.....] copies		
Project Name:			
Project Number:			

1. TENDER

I / We			
	Full name in BLOCK LETTERS of the Tenderer (Individual or Company) (Include trading name if applicable)		
ACN:		ABN:	
Address:			
QBCC License No:		QBCC License Category:	
Other Licence/ Registration:		Restrictions / Conditions (if any):	
Phone:		Fax:	
Email:			

hereby tender to execute and complete all work and perform all of the obligations for the above Project in accordance with the Tender Documents:

for the lump sum of		(incl. GST) ("Tender Sum")
	(amount in words)	
Calculation of GST component of Tender Sum	Tender Sum excl. GST:	\$
	GST Component of Tender Sum:	\$
	Tender Sum:	\$
The Tender Sum includes for the provision of:	<input type="checkbox"/> addenda designated [.....] inclusive; or (Tick and list all addenda, as applicable, e.g. 1, 2, 3 – not three or 3)	
	<input type="checkbox"/> Nil addenda. (tick, if no addenda provided)	

Tenderer's address for service of notices: |

WorkCover Insurance Policy Number:		Valid to:/...../20.....
Public Liability Policy Number:		Valid to:/...../20.....
Other Policy Type/Number:		Valid to:/...../20.....

hereby tender in respect of the following items for the above project in accordance with the terms, conditions and requirements contained in the Tender Documents as amended or clarified by Addenda numbered [.....] * inclusive. (*List all addenda, as applicable, e.g. 1, 2, 3 – not three or 3)

General Tender Warranty

Without limitation, I/we acknowledge the tender warranties set out at clause 16 of the Conditions of Tender.

Warranty to Comply with Training Policy

By its signature on this Tender Form, the Tenderer warrants that, if awarded a Contract for this project, it will comply with the training requirements of Clause 30.1 of the Conditions of Contract, if applicable, and acknowledges that this warranty is given in addition to any of the terms of the Conditions of Contract.

Ethical Supplier Threshold

(The Tenderer **must** respond to the Ethical Supplier Threshold criteria included below. Responses should only include matters from the previous 5 years, starting from 1 August 2019)

Since 1 August 2019, has the Tenderer:	(tick one)
1. contravened a civil remedy provision of Chapter 2 or Chapter 3 of the <i>Fair Work Act 2009</i> (Cth), or committed an offence against the <i>Fair Work Act</i> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. contravened a civil remedy provision of Chapter 2, 3, 4, 5, or 7 of the <i>Industrial Relations Act 2016</i> (Qld), or committed an offence against the <i>Industrial Relations Act</i> , or failed to pay employment related levies, or other payments, established under Queensland legislation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. failed to make superannuation contributions on behalf of employees in accordance with law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. purported to treat employees as independent contractors, where they are not?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. required persons who would otherwise be employees to provide an Australian Business Number so that they could be treated as independent contractors?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6. engaged persons on unpaid work trials or as unpaid interns, where they should be treated as employees?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7. entered into an arrangement for the provision of labour hire services with a person who is not licensed under the <i>Labour Hire Licensing Act 2017</i> (Qld), or a supplier who is an unlicensed provider under the <i>Labour Hire Licensing Act</i> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
8. paid employees' wages below those provided for in an applicable modern award?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Warranty to comply with Queensland Procurement Policy, Ethical Supplier Threshold and Ethical Supplier Mandate

By its signature on this Tender Form, the Tenderer warrants that:

1. the Tenderer's responses to the Ethical Supplier Threshold criteria are true and correct;
2. if, at any time after the Tenderer submits its Tender, the Tenderer's responses to the Ethical Supplier Threshold criteria are no longer true and correct for any reason, the Tenderer will promptly notify the Principal's Contact Officer of the change to the Tenderer's response; and
3. if awarded a Contract for this project, the Tenderer will comply with the requirements of Clauses 7.2 and 30.3 of the Conditions of Contract and acknowledges that this warranty is given in addition to any of the terms of the Conditions of Contract.

Warranty to comply with the Queensland Government Supplier Code of Conduct

By its signature on this Tender Form, the Tenderer:

1. acknowledges that:
 - a. the Queensland Government wants to work with ethically, environmentally and socially responsible suppliers;
 - b. the Supplier Code of Conduct sets out the standards and expectations government has of suppliers who want to work with it;
 - c. the standards and expectations set out in the Supplier Code of Conduct do not limit, alter or supersede any obligations of the Tenderer under a subsequent contract or at law;
 - d. to ensure that the Supplier Code of Conduct remains current and relevant, it may be amended or updated by the Queensland Government; and
 - e. the Tenderer is responsible for checking for updates and amendments to the Supplier Code of Conduct.
2. confirms that:
 - a. the Tenderer understands the Queensland Government's standards and expectations of suppliers as set out in the Supplier Code of Conduct;
 - b. the Tenderer meets and will continue to meet the Queensland Government's standards and expectations as set out in the Supplier Code of Conduct, including as may be updated or amended;
 - c. the Tenderer will raise concerns or otherwise seek clarification in relation to any aspects of the Supplier Code of Conduct, including any updates or amendments to the Supplier Code of Conduct; and
 - d. the Tenderer will make all reasonable efforts to ensure its supply chain is ethical, compliant with the Supplier Code of Conduct and not complicit in practices that may exploit human rights or constitute modern slavery, including taking appropriate measures to assess and address supply chain risks.
3. warrants that, if awarded a Contract for this project, the Tenderer will meet the undertakings provided in this warranty.

Project Trust Accounts

The Tenderer acknowledges that the successful Tenderer may be required to establish a project trust account pursuant to the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) (“BIF Act”).

The Tenderer:	(tick one)
considers that more than 50% of the Tender Sum (excl. GST) is for ‘project trust work’ (as defined in section 8 of the BIF Act).	<input type="checkbox"/> Yes <input type="checkbox"/> No
intends entering into one or more subcontracts for all or part of the ‘contracted work’ (as defined in section 8 of the BIF Act), if it is the successful Tenderer and subject to receiving approval to subcontract.	<input type="checkbox"/> Yes <input type="checkbox"/> No

<u>Corporation</u>	<u>ACN & Registered office address</u>
<small>Where the Tenderer is related to, or is a subsidiary of, another or other corporations as defined in the Corporations Act 2001 (Cth), that (those) corporation(s) is (are) as follows:</small>	

Executed by:		
	<small>Name of Company</small>	<small>ACN</small>

In accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signed by:		
	<small>Signature of Director/Secretary</small>	<small>Signature of Director</small>
	<small>Name of Director/Secretary</small>	<small>Name of Director</small>
	On the [.....] day of [.....] 20[.....]	

Privacy Statement: The Principal is collecting the personal information on this Tender Form for the purposes of Tender evaluation and any subsequent contract that may arise. The information may be used in accordance with the provisions of the Tender Documents. Any personal information included on this Tender Form may be disclosed to the Tender evaluation panel and their advisors but will not be disclosed to any other third party without the Tenderer’s consent unless authorised or required by law or stipulated in the Tender Documents. Personal information will be handled in accordance with the *Information Privacy Act 2009* (Qld).
 The Principal is also collecting the personal information on this Tender Form for the purposes of determining Tenderer compliance with the Ethical Supplier Threshold and the Ethical Supplier Mandate in respect of the Tender and any subsequent contract that may arise. Any personal information included on this Tender Form may be disclosed to the Queensland Government Procurement Compliance Branch within the Department of Energy and Public Works and the Tripartite Procurement Advisory Panel for compliance purposes.

BREAKDOWN OF TENDER SUM

2. RECURRENT MAINTENANCE WORK	<small>Conditions of Contract Clause 1.1</small>
Lump Sum (inclusive of GST)	\$.
3. UNPLANNED MAINTENANCE WORK	<small>Conditions of Contract Clause 1.1 and 10</small>
Tendered as a Schedule of Rates (inclusive of GST), as set out in the Pricing Schedule. The Schedule of Rates does not form part of the Tender Sum.	
4. ESTABLISHMENT WORK	<small>Conditions of Contract Clause 1.1</small>
Lump Sum (inclusive of GST)	\$.
5. HANDOVER WORK	<small>Conditions of Contract Clause 1.1</small>
Lump Sum (inclusive of GST)	\$.

This table provides a breakdown of the lump sum components which make up the total of the Tender. If there is a discrepancy between the Tender Sum stated in the Tender Form, the values provided in the table above, or the amount stated in words in the Tender Form, the amount stated in words in the Tender Form shall prevail.

CONDITIONS OF TENDER

These Conditions of Tender apply to the procurement of maintenance services over a specified term.

1. INTERPRETATION

1.1 These Conditions of Tender apply to:

- (a) Tenders submitted through an electronic tender system (electronic tender); and
- (b) Tenders submitted in hardcopy format (hardcopy tender).

1.2 Meanings assigned to words and expressions in the Conditions of Contract shall apply to those words and expressions used in the Tender Documents and, except where the context otherwise requires, 'include' is not a word of limitation.

1.3 Unless the contrary intention applies, the following definitions also apply:

'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;

'Conforming Tender' means a Tender made on the basis of the Tender Documents for the performance of the Contractor's Activities 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) the Department of Energy and Public Works QTender;
- (b) the Department of Energy and Public Works QBuild eTender; or
- (c) 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;

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

'Tender' means an offer submitted by a Tenderer;

'Tenderer' means a party submitting a Tender and includes a party invited directly or indirectly by the Principal to submit a Tender;

'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. TENDER DOCUMENTS

- 2.1 "Tender Documents" comprise:
- (a) the Tender Form and any other documents provided to the Tenderer by or on behalf of the Principal for the purposes of making a Tender;
 - (b) these Conditions of Tender;
 - (c) the Conditions of Contract for Term Maintenance;
 - (d) the Maintenance Brief;
 - (e) the Australian Standard® Code of Tendering (AS4120-1994) as amended by these Conditions of Tender;
 - (f) any documents or parts of documents expressly referred to in the Tender Documents; and
 - (g) any other documents as are issued and/or referred to by the Principal for the purpose of tendering;
 - (h) but excluding the Notice to Tenderers and any other document or part thereof which is expressly stated to be excluded from the Tender Documents.
- 2.2 To the extent of any discrepancy or inconsistency between these Conditions of Tender and AS4120-1994, these Conditions of Tender shall prevail.
- 2.3 A copy of AS4120-1994 is available at the Standards Australia Webstore, <http://www.standards.org.au>.
- 2.4 An electronic copy of the Tender Documents is available at the electronic location stated in the invitation to tender.
- 2.5 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.
- 2.6 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.
- 2.7 A party issued with Tender Documents:
- (a) must ensure that only appropriate employees have access to the Confidential Information. In all such cases, the party is to inform such employees 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 for any reason, or use or permit it to be used directly or indirectly for any reason; and
 - (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.

2.8 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.

3. LODGEMENT OF TENDER**3.1 For electronic tender:**

- (a) Subject to clause 3.1(c), the Tender shall be submitted in electronic format delivered to the electronic tender system indicated as the Tender lodgement address – electronic tender.
- (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 3.1(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 3.1(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 3.1(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; and
 - (ii) 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.

3.2 For hardcopy tender:

- (a) The Tender shall be submitted in hardcopy format, in a sealed envelope, addressed and delivered to the Tender lodgement address – hardcopy tender.
- (b) The envelope shall be endorsed with the Project Name and Project Number, the Time for close of Tender and the Tenderer's name and address. The Tender shall be lodged in the tender box at the Tender lodgement address – hardcopy tender by being placed therein before the Time for close of Tender. Any Tender, or part thereof, not in the tender box before the Time for close of Tender may be rejected at the discretion of the Principal.
- (c) In exercising its discretion as to the rejection of any Tender, the Principal shall, amongst other factors, consider any evidence that such Tender was dispatched to the Tender lodgement address – hardcopy tender in sufficient time to reach that office and be placed in the tender box under normal circumstances before the Time for close of Tender.

3.3 A Tender received by a means other than that expressly provided for in these Conditions of Tender may not be considered.

4. TENDER REQUIREMENTS

- 4.1 For electronic tender, the Tender shall include electronic versions of a completed Tender Form plus all other documents required by the Tender Documents including completed Schedules in the form/s provided in these Conditions of Tender.
- 4.2 For hardcopy tender, the Tender shall include an original and four (4) copies (unless otherwise specified in the Tender Documents) of a completed Tender Form plus all other documents required by the Tender Documents including completed Schedules in the form/s provided in these Conditions of Tender.
- 4.3 The Tenderer shall complete and sign all documents that are required to be completed, signed, and lodged as the Tender.
- 4.4 The Tenderer shall execute all such further documents and do all acts and things required by the Principal for the purposes of giving effect to these Conditions of Tender.
- 4.5 The Tenderer and all relevant third parties shall do all acts and things required by the Principal for the purposes of giving effect to these Conditions of Tender.

5. INFORMATION

- 5.1 Unless otherwise agreed with the Principal's Contact Officer, 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.
- 5.2 The Tenderer shall not communicate with any person or corporation who is the intended owner, occupant, operator, or manager of any facility the subject of the Tender except with the express written approval of the Principal's Contact Officer.
- 5.3 The Principal will not be liable for any claim on the grounds of erroneous or insufficient information.
- 5.4 The Principal shall not be bound by, and the Tenderer may not rely upon, any oral advice or information given or furnished in respect of the Tender but shall be bound only by written or electronically transferred advice or information furnished by or on behalf of the Principal.
- 5.5 For the purposes of evaluation of Tenders, Tenderers shall provide such additional information as may be requested by the Principal, including financial data.

6. TENDERER TO INFORM ITSELF

- 6.1 The Tenderer is deemed to have visited and inspected the Facility and satisfied itself of conditions, circumstances and locations and otherwise acquainted itself with all matters relating to the proposed Contract before submitting its Tender.

7. TENDERING BY GOVERNMENT AGENCIES

- 7.1 Notwithstanding clause 6.2.2 of AS4120-1994, the Principal may invite, consider, or accept a Tender from one or more government agencies.

8. COSTS OF TENDERING

- 8.1 Costs of tendering shall be borne by the Tenderer.

9. PRINCIPAL NOT BOUND

- 9.1 Notwithstanding the evaluation of Tenders (if any) in accordance with clause 10, the Principal may in its absolute discretion and at any time accept, or decline to accept, any Tender.
- 9.2 Without derogating from the provisions in clause 9.1, the Principal may, in its absolute discretion, decline to evaluate any Tender that it has determined to be an Alternative Tender.

- 9.3 Notwithstanding that the Principal may have invited Tenders from selected organisations or has otherwise procured submission of Tenders, the Tenderer acknowledges that:
- (a) the Principal may not, at the time of inviting tenders, have satisfied itself as to the Tenderer's financial capacity to satisfactorily perform and complete the Contract in accordance with its terms; and
 - (b) the Principal may decline to consider or accept a Tender from a Tenderer who 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.
- 9.4 The Tenderer may be requested to provide financial information to a party nominated by the Principal for the purpose of an assessment by the Principal that the Tenderer has sufficient financial capacity to satisfactorily perform and complete the Contract in accordance with its terms. The Tenderer must provide such information within seven (7) days of request. A failure to provide the requested information within seven (7) days 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. In the provision of financial information to the party nominated by the Principal, the Tenderer accepts that such information may be provided by the Principal to the Queensland Building and Construction Commission for the purposes of determining the continuing capacity of the licensee to meet any licensing criteria required by the *Queensland Building and Construction Commission Act 1991* (Qld).

10. TENDER EVALUATION

- 10.1 The Principal shall evaluate Conforming Tenders in accordance with the tender evaluation criteria contained in Schedule 1 or, in the absence of a Schedule 1, on the basis of best value for money for Government determined in accordance with the Queensland Procurement Policy.
- 10.2 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 Schedule 1.
- 10.3 Where both Conforming and Alternative Tenders have been evaluated, the Principal may accept a Tender which on a view of all circumstances represents the best value for money for Government determined in accordance with the Queensland Procurement Policy.
- 10.4 In the event that the Tender contains an ambiguity in relation to the Tender Price, then the "Tender Price" inclusive of GST amount in words stated in the Tender Form shall prevail.
- 10.5 The Tenderer shall provide such additional information as may be requested by the Principal, including relating to compliance with the Ethical Supplier Threshold, the Ethical Supplier Mandate and the Supplier Code of Conduct.
- 10.6 Information relating to the Tenderer including, without limitation, that relevant to the 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.

11. TENDER EVALUATION PROCESS

- 11.1 In the evaluation of Tenders (if any) in accordance with clause 10, 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 a Tenderer's Tender (including to request the Tenderer to provide additional information, documents, or evidence in connection with its Tender);
 - (b) shortlist or prefer any one or more Tenderers; and
 - (c) discuss or negotiate with, or receive presentations, further submissions, or final offers 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 price.

- 11.2 The provisions of clause 11.1 and any exercise by the Principal of its rights under clause 11.1:
- (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 11.1); and
 - (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.
- 11.3 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 11.1 in connection with the evaluation of Tenders.

12. PROJECT FUNDING

- 12.1 The Principal will not provide particulars of project funding arrangements to Tenderers.

13. INTELLECTUAL PROPERTY

- 13.1 Except in the case of the Contractor's Background IP, Intellectual Property Rights in all material, whether of the Tenderer or a third party, submitted by a Tenderer in its Tender is assigned to the Principal, without any requirement for further documentation or writing, upon acceptance by the Principal of its Tender.
- 13.2 To the extent that any material submitted by a Tenderer is the subject of pre-existing Intellectual Property Rights of third parties, the Tenderer warrants that it is able to procure an assignment of all such Intellectual Property Rights to the Principal and agrees to obtain such assignment upon acceptance of its Tender.
- 13.3 The Tenderer 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.

14. RIGHT TO INFORMATION AND DISCLOSURE

- 14.1 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.
- 14.2 Information contained in a 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.
- 14.3 Notwithstanding any other provision of the Tender Documents or a Tender, if a Tender is accepted, the Principal may publish on a Queensland Government 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 tenders);
- (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.

14.4 For open tenders, where the Tender Price has a weighting of 100% in the Tender Evaluation Criteria, the Principal may publish the names of all Tenderers and lump sum Tender Prices tendered.

15. REGISTRATION AS A PRE-QUALIFIED TENDERER

15.1 The Principal may decline to consider or accept a Tender from a Tenderer who, 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 released and current at the time and date at which Tenders were invited.

16. TENDERER WARRANTIES

16.1 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 sum, 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;
- (d) it shall maintain the skill and expertise necessary to complete the Contractor's Activities for the duration of the Contract;
- (e) all persons nominated in the Tender as key personnel will remain working on the project to the extent indicated in the Tender unless the Principal otherwise consents in writing;
- (f) it will fulfil all aspects of the Tender, including without limitation the Tenderer's Tender evaluation criteria offers;
- (g) it will comply with the Ethical Supplier Threshold, the Ethical Supplier Mandate and the Supplier Code of Conduct;
- (h) 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;
- (i) it will fulfil all obligations required in respect of Queensland Government policies; and
- (j) it will give the Principal prior notice of any likely change in circumstances in respect of this clause 16.

- 16.2 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.
- 16.3 In addition to any other actions the Principal may take, any breach of the warranties given in this clause 16 will result in a review of the Tenderer's PQC registration status.

17. TRUST ACCOUNTS

- 17.1 In this clause 17, terms defined by the 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.
- 17.2 The Tenderer's attention is drawn to:
- (a) Chapter 2 (Statutory trusts) of the BIF Act; and
 - (b) Clause 24.3 of the Conditions of Contract.
- 17.3 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 24.3 of the Conditions of Contract.

18. ETHICAL SUPPLIER THRESHOLD

- 18.1 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.
- 18.2 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.
- 18.3 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 9.2, decline to evaluate the Tender, as if it were an Alternative Tender; or
 - (b) in accordance with clause 9.1, decline to accept the Tender.

19. ETHICAL SUPPLIER MANDATE

- 19.1 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.
- 19.2 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 Queensland Government Procurement Compliance Branch within the Department of Energy and Public Works 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.

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 evaluation criteria listed in Schedule 1 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 Conditions of Contract for Term Maintenance, including, but not limited to, those clauses concerning Collusive Arrangements (Clause 28), Subcontracting (Clause 7.2), Occupational Health and Safety Audit (Clause 16.4), the Training Policy (Clause 30.1), Site Personnel Register (Clause 8.3) and Payment of Workers and Subcontractors (Clause 24);
- (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 – Tender Evaluation

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:

1. whether the Tender contains errors of an administrative nature which do not amend or change the substance of the offer;
2. whether the Tender contains clarification of an ambiguity; and
3. the extent to which the Tender does not contain all of the documents required by the Tender Documents to be submitted.

In making a determination, the Principal's consideration shall not be limited to the matters nominated at 1, 2 and 3 above.

Where, in addition to the Tender Price, the Tenderer is required to submit information addressing other tender evaluation criteria and the Tenderer fails to address any of the criteria then the Tender shall be deemed to be an Alternative Tender. Where the Tenderer is required to submit information addressing tender evaluation criteria in addition to the Tender Price, the Tenderer must be able to demonstrate and evidence ability against each of the criteria. If, in the opinion of the Principal, in any criteria, the Tenderer fails to demonstrate a satisfactory ability in relation to that criterion, the Principal may decline to further evaluate the Tender. Without limiting the foregoing, if the criteria have points allocated to it and the Tenderer receives a point score less than 50% of the highest possible point score for a given criterion, the Principal in its absolute discretion may decline to further evaluate the Tender.

Any Tender that contains qualifications shall be deemed to be an Alternative Tender.

In the event that the Tender contains an ambiguity in relation to the Tender Price, then the "Tender Price" inclusive of GST amount in words stated in the Tender Form shall prevail.

Tender Evaluation Criteria – Conforming Tenders

Where the Price Criterion - Tender Price is the only criterion given a weighting or is allocated points, the Tenderer is not required to provide information in relation to any other criteria.

GUIDE NOTE [Delete before publishing]

- ***The Project Manager must determine and document the applicable tender evaluation methodology***
- ***The Project Manager must complete the Non-Price Criteria, and how it will be evaluated, as applicable for the project.***

Tender Evaluation Criteria – ~~XXX~~ Method***GUIDE NOTE [Delete before publishing]***

- ***The Project Manager must determine and document the applicable tender evaluation methodology***
- ***The Project Manager must complete the Non-Price Criteria, and how it will be evaluated, as applicable for the project.***

The Tenderer must objectively and numerically identify the extent to which the Tender addresses the above criteria (other than the Tender Price) and otherwise substantiate the Tender in respect of the criteria in a submission containing not more than 5000 words. Responses to the above criteria (other than the Price Criterion) shall be bound separately to the Tender Form and shall not include the Tender Price. |