



## **Tender Requirements**

Project Name

.....

Project Number

.....

This contract document has been developed by Contract Services, Department of Housing, Local Government, Planning and Public Works, in accordance with the Building Policy Framework.

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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 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.

## **1. Invitation to Tender**

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

Project Name .....

Project Number .....

## **2. Guidelines and additional information**

Copies of the Government's suite of building construction and maintenance contracts are available at: <https://www.forgov.qld.gov.au/building-construction-and-maintenance-contract-templates>.

Guidelines and additional information are available online regarding:

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

## **3. 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](#).

**GUIDENOTE: [DELETE BEFORE PUBLISHING]**

- **Where Australian Government funding meets the thresholds described below for the Work Health and Safety Accreditation Scheme accreditation, clause 15.3 of the Special Conditions of Contract will be applicable and the relevant Annexure item should be completed accordingly to reflect this.**
- **If this project is not the subject of Australia Government Funding or the Australian Government Funding does not meet the thresholds described, delete section 4 below.**

**4. Australian Government funding**

This project is the subject of Australian Government funding. Accordingly, the Australian Government requires that contractors engaged by the Principal be accredited under and comply with the Work Health and Safety Accreditation Scheme. Further information can be obtained at [www.fsc.gov.au](http://www.fsc.gov.au).

**Work Health and Safety Accreditation Scheme**

The Australian Government is committed to improving Work Health and Safety (“WHS”) outcomes in the building and construction industry. An important initiative to achieve this is the Work Health and Safety Accreditation Scheme (the “Scheme”). The Scheme is established by the *Federal Safety Commissioner Act 2022* (Cth) and specified in the *Federal Safety Commissioner (Accreditation Scheme) Rules 2023* (Cth).

Depending on the value of a project, only persons who are accredited by the Federal Safety Commissioner under the Scheme can enter into head contracts for building work that is funded directly or indirectly by the Australian Government. Rule 26(g) of the *Federal Safety Commissioner (Accreditation Scheme) Rules 2023* (Cth) outlines provisions applying to joint venture arrangements that include accredited and unaccredited builders.

The Scheme accreditation requirement applies to building work that is indirectly funded by the Australian Government where:

- the project includes building work of \$4 million (including GST) or more; and
- the value of the Australian Government contribution to the project is at least \$6 million (including GST) and represents at least 50 per cent of the total construction project value; or
- the Australian Government contribution to a project is \$10 million (including GST) or more, irrespective of the proportion of Australian Government funding.

Building work is considered indirectly funded where it is funded by the Commonwealth (Australian Government) or a Commonwealth authority through grants and other programs. This includes building projects where the Australian Government provides money through a funding agreement or grants to a person, for example a state or territory government who then may contract with persons who will undertake the building work or persons who will arrange for the building work to be carried out.

Indirectly funded building work also includes building projects that the person, who receives Australian Government funding, facilitates by agreement (for example pre-commitment lease, Build Own Operate (“BOO”) and Build Own Operate Transfer (“BOOT”) arrangements).

If a project meets the above threshold amounts, the requirement that accredited builders carry out the building work only applies to contracts for building work that are valued at \$4 million (GST inclusive) or more.

Tenderers are referred to the Tender Form, clause 21 of the Conditions of Tender and Clause 15.3 of the Special Conditions of Contract.

## 5. [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]

***GUIDENOTE: [DELETE BEFORE PUBLISHING]***

- ***Once the form has been completed, please convert to PDF before inserting into the Tender Pack.***
- ***To enable Hyperlinks: Go to File menu, select Save as, click down arrow for format type, scroll down and choose PDF.***
- ***Please note printing to PDF will not enable the hyperlinks to work.***

## CONDITIONS OF TENDER

Lump sum using the Special Conditions of Contract to Australian Standards® General conditions of contract for design and construct AS4300-1995.

### 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 and the Special 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 any Tender that is not a Conforming Tender;

'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) the Department of Energy and Climate QTender;
- (b) the Department of Housing, Local Government, Planning 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;
- (b) these Conditions of Tender;

- (c) the Australian Standards® Code of Tendering (AS4120-1994) as amended by these Conditions of Tender;
  - (d) the Australian Standards® General conditions of contract for design and construct (AS4300-1995) as amended by the Special Conditions of Contract and the Supplementary Special Conditions of Contract;
  - (e) the Principal's Project Requirements;
  - (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 In the event of any discrepancy or inconsistency between the Special Conditions of Contract and AS4300-1995, the Special Conditions of Contract shall prevail.
- 2.4 In the event of any discrepancy or inconsistency between the Special Conditions of Contract and the Supplementary Special Conditions of Contract, the Supplementary Special Conditions of Contract shall prevail.
- 2.5 An electronic copy of the Tender Documents (excluding AS4120-1994 and AS4300-1995) is available at the electronic location stated in the invitation to tender.
- 2.6 AS4120-1994 and AS4300-1995 are available for purchase at the Standards Australia Webstore, <http://www.standards.org.au>.
- 2.7 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 a Tender in response to the Invitation to Tender and the Tender Documents.
- 2.8 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.

### **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 site and its surrounds and satisfied itself of conditions and facilities 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 that 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 Sum, then the “Tender Sum” 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 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 Sum has a weighting of 100% in the Tender Evaluation Criteria, the Principal may publish the names of all Tenderers and lump sum Tender Sums 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 Sum of any other tenderer, nor has it communicated with any other tenderer in relation to the Tenderer's Tender Sum, 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 work under the Contract 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. FORMAL INSTRUMENT OF AGREEMENT**

17.1 If the Annexure to the Special Conditions of Contract indicates that the execution of a Formal Instrument of Agreement is required, the successful Tenderer and the Principal shall execute a Formal Instrument of Agreement in accordance with the Special Conditions of Contract.

## 18. TRUST ACCOUNTS

- 18.1 In this clause 18, 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.
- 18.2 The Tenderer's attention is drawn to:
- (a) Chapter 2 (Statutory trusts) of the BIF Act; and
  - (b) Clause 43.4 of the Special Conditions of Contract.
- 18.3 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 43.4 of the Special Conditions of Contract.

## 19. ETHICAL SUPPLIER THRESHOLD

- 19.1 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.
- 19.2 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.
- 19.3 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.

## 20. ETHICAL SUPPLIER MANDATE

- 20.1 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.
- 20.2 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 Climate 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.

## 21. WORK HEALTH AND SAFETY ACCREDITATION SCHEME

- 21.1 If stated in the Annexure to the Special Conditions of Contract, this clause 21 will apply.
- 21.2 For the purposes of this clause:
- ‘builder’, ‘building work’ and ‘WHS Accreditation Scheme’ have the same meanings as in the *Federal Safety Commissioner Act 2022* (Cth).
- 21.3 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.
- 21.4 The successful Tenderer must comply with all conditions of the WHS Accreditation Scheme accreditation.

## 22. PERFORMANCE REPORTING

22.1 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;
  - (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 6.3), Subcontracting (Clause 9.2), Occupational Health and Safety Audit (Clause 15.2); Training Policy (Clause 29.1A), Site Personnel Register (Clause 29.4) and Payment of Workers and Subcontractors (Clause 43);
- (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.

## 23. STATUTORY INSURANCE SCHEME

23.1 The Tenderer must note that where the work under the Contract involves ‘residential construction work’, as that term is defined in the *Queensland Building and Construction Commission Act 1991* (Qld), payment of the required insurance premium must be made to the Queensland Building and Construction Commission. The cost of complying with that obligation shall be deemed to be included in the Tender.

## 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 Sum, 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 Sum, 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 Sum, then the "Tender Sum" inclusive of GST amount in words stated in the Tender Form shall prevail.

### ***Tender Evaluation Criteria – Conforming Tenders***

Where the Price Criterion – Tender Sum 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 whether the tender is to be evaluated using the PQM or the Weighting method. Delete the tender evaluation method format not being used.***
- ***The Project Manager must complete the Non-Price Criteria as applicable for the project. The Criterion 2 – Non-Price Criteria listed below in both methods are EXAMPLES ONLY.***







- ***Project personnel organization chart, including allocated tasks and resource commitment level (percentage of time allocated to the project);***
- ***Demonstrate how opportunities for local suppliers are optimised and the local benefits test applied; and***
- ***Other pertinent project specific requirements which may include experience in delivering under a specific form of contract, specific site conditions or operating environment, contamination considerations or other project considerations that may impact the cost or time to deliver the project successfully.***

The Tenderer must objectively and numerically identify the extent to which the Tender addresses the above criteria (other than the Tender Sum) 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 Sum.

**Tender Evaluation Criteria – Price Quality Method (PQM)****GUIDE NOTE [Delete before publishing]**

- Use the below format for PQM tender evaluation and delete the Weighting Method format option.
- Allocate points to each of the criteria listed under Criterion 2 – Non-Price Criteria. Criterion 1 – Price Criterion is not allocated points.

**Criterion 1 Price Criterion - Tender Sum**

Where a Tenderer tenders a rate for the provisional number of delay days stated in the Tender Form and a higher rate for delay days thereafter then, for the purposes of evaluating tenders only, the Tender Sum shall be adjusted by deleting the Provisional Delay Allowance plus GST and adding the total of the provisional number of delay days multiplied by the higher tendered rate plus GST.

**Criterion 2 Non-Price Criteria** **Points (total)** .....

The Tenderer is required to address each of the following:

1. Project Specific Objectives Sub-Points .....

**EXAMPLE [delete before publishing]:** Methodology. Provide further information or refer to Specification for more details of requirements.

2. Project Specific Objectives Sub-Points .....

**EXAMPLE [delete before publishing]:** Resourcing Strategy including Key Personnel

3. Project Specific Objectives Sub-Points .....

**EXAMPLE [delete before publishing]:** Use of local subcontractors and suppliers in accordance with the Queensland Procurement Policy.

**GUIDE NOTE – Non-Price Criteria [Delete before publishing]**

**When non-price criteria have been approved to form part of the tender evaluation process, the responsible Project Officer should complete this section in accordance with the relevant project specific issues and ensure project objectives and project considerations are well documented and captured in appropriate detail in the Specification.**

**EXAMPLE:**

**In submitting a Tender, Tenderers are expected to address the following (the responses may be in the form of returnable schedules or provision of sample strategies or project specific documents):**

- **Recognises the need for existing functions to remain operational;**
- **Provides for effective communication strategies between all interested parties;**
- **Provides a strategy for management of security which ensures the safety of workers, staff and the general public;**
- **Provides a strategy for community consultation and awareness; and**
- **Provides for project specific, and backup, key team members.**

**Additional EXAMPLES of Project Specific issues that may be expected to be addressed could include:**

- **A curriculum vitae for each person nominated;**
- **The name of a referee for each person nominated. The Principal reserves the right to contact additional referees not nominated in the Tender and to include the results of such contact in the tender evaluation;**
- **Project personnel organization chart, including allocated tasks**

- ***Demonstrate how opportunities for local suppliers are maximised and the local benefits test applied; and***
- ***Other pertinent project specific requirements which may include experience in delivering under a specific form of contract, specific site conditions or operating environment, contamination considerations or other project considerations that may impact the cost or time to deliver the project successfully.***

The Tenderer must objectively and numerically identify the extent to which the Tender addresses the above criteria (other than the Tender Sum) 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 Sum.

***Quality Premium Adjustment of Tender Sums, if the Price Quality Premium method of Tender Evaluation is used by the Principal***

For the purposes of tender evaluation only, the Tender Sum of each tender will be adjusted by application of a quality premium calculated as follows:

- Weighted Score for each non-price criterion = Tenderer's criterion score (0-5)/5 (or such other applicable scoring range) x weighting (0-10) (or such other weighting)
- Weighted Sum = sum of all non-price criterion Weighted Scores
- Weighted Sum Margin = Tenderer's Weighted Sum – the Weighted Sum of the Tenderer with the lowest Weighted Sum
- Quality Premium for each tender = pre-tender estimate x Weighted Sum Margin / (100-weighting)

For the purposes of the tender evaluation only, the Quality Premium thus established for each tender will be subtracted from the tendered sum of that tender and the tenders compared accordingly.