# Tender Requirements

|  |  |
| --- | --- |
| 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 or Purchaser.*
* *The Purchaser 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

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](https://www.epw.qld.gov.au/about/strategy/buy-qld), the [Ethical Supplier requirements](https://www.business.qld.gov.au/running-business/marketing-sales/tendering/supply-queensland-government/ethical-supplier-requirements) and the [Queensland Government Supplier Code of Conduct expectations](https://www.forgov.qld.gov.au/finance-and-procurement/procurement/procurement-resources/procurement-policies-and-frameworks/queensland-government-supplier-code-of-conduct); and
* the Queensland Government [Building Policy Framework](https://www.epw.qld.gov.au/about/initiatives/new-building-policy-framework).

### [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]

## CONDITIONS OF TENDER

### DEFINITIONS AND INTERPRETATION

* + 1. These Conditions of Tender apply to:

Tenders submitted through an electronic tender system (electronic tender); and

Tenders submitted in hardcopy format (hardcopy tender).

* + 1. Meanings assigned to words and expressions in the Conditions of Contract will 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.
    2. Unless the contrary intention applies, the following definitions also apply:
       - 1. **Alternative Tender** means any Tender that is not a Conforming Tender;
         2. **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:

complies in every respect with the requirements of the Tender Documents including (without limitation) the Conditions of Tender; and

does not contain provisions not required or not allowed by the Tender Documents;

* + - * 1. **Electronic tender system** refers to:

the Department of Energy and Climate QTender;

the Department of Housing, Local Government, Planning and Public Works QBuild eTender; or

another Information System, specified in the Tender Form;

* + - * 1. **Information System** means a system for generating, sending, receiving, storing, or otherwise processing electronic communications;
        2. **Purchaser’s Contact Officer** means the Purchaser’s Contact Officer specified in the Tender Form;
        3. **Tender** means a Tender submitted by a Tenderer;
        4. **Tenderer** means a party submitting a Tender and includes a party invited directly or indirectly by the Purchaser to submit a Tender;
        5. **Tender lodgement address** means the address described as such in the Tender Form;
        6. **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.

### TENDER DOCUMENTS

* + 1. The Tender Documents comprise of:

the Tender Form;

the letter of invitation to tender (if any);

these Conditions of Tender;

the Australian Standard® Code of Tendering (AS4120-1994) as amended by these Conditions of Tender;

the Conditions of Contract for Supply of Building Materials;

the Specification and Drawings (if any);

any documents or parts of documents expressly referred to in the Tender Documents; and

any other documents as are issued and/or referred to by the Purchaser for the purposes of tendering;

but excluding the Notice to Tenderers and any other document or part thereof which is expressly stated to be excluded from the Tender Documents.

* + 1. AS4120-1994 is available for purchase at the Standards Australia Webstore, <http://www.standards.org.au>.
    2. The law governing the Tender Documents and any subsequent contract, if applicable, is the law of Queensland and the parties submit to the non-exclusive jurisdiction of the Courts of Queensland.
    3. 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.
    4. A party issued with Tender Documents:

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;

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

fully indemnifies the Purchaser 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.

### LODGEMENT OF TENDER

* + 1. For hardcopy tender:

The Tender shall be submitted in hardcopy format, in a sealed envelope, addressed and delivered to the Tender lodgement address – hardcopy tender.

The envelope shall be endorsed with the Project Name and Project Number (if any), 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 Purchaser.

In exercising its discretion as to the rejection of any Tender, the Purchaser 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.

* + 1. For electronic tender:

Subject to clause 3.2(c), the Tender shall be submitted in electronic format delivered to the electronic tender system indicated as the Tender lodgement address – electronic tender.

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 Purchaser.

In the event of:

a technical failure of the Tenderer’s Information System or of the Purchaser’s electronic tender system, resulting in an inability to submit the Tender in electronic format as required by clause 3.2(a); or

a failure of the Purchaser’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 3.2(a);

the Purchaser’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 Purchaser’s Contact Officer, or by email, to the email address advised by the Purchaser’s Contact Officer.

If a hardcopy or email Tender is submitted pursuant to clause 3.2(c), the Tender shall:

include the Project Name and Project Number, the Time for close of Tender and the Tenderer’s name and address; and

be lodged in the tender box at the location advised by the Purchaser’s Contact Officer by being placed therein, or received by email to the advised email address, before the Time for close 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 Purchaser.

* + 1. A Tender received by a means other than expressly provided for in these Conditions of Tender may not be considered.
    2. The Tenderer shall complete and sign all documents that are required to be completed signed and lodged as the Tender.

### INFORMATION

* + - * 1. The Purchaser 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 Purchaser.

### TENDERER TO INFORM ITSELF

* + - * 1. The Tenderer is required to satisfy itself as to the correctness and sufficiency of its Tender. A Tender shall be deemed to be on the basis that the Tenderer has a full knowledge of all matters relating to the Contract and has undertaken an inspection of the Site and any existing structures or features thereon.

### PURCHASER NOT BOUND

* + 1. Notwithstanding the evaluation of Tenders (if any) in accordance with clause 7.2, the Purchaser may, in its absolute discretion and at any time, accept or decline to accept any Tender. A Tender shall not be deemed to have been accepted until the date of notification in writing to the Tenderer of such acceptance.
    2. Without derogating from the provisions in clause 6.2, the Purchaser may, in its absolute discretion, decline to evaluate any Tender that it has determined to be an Alternative Tender

### EVALUTION OF TENDERS

* + 1. Notwithstanding that the Purchaser may have invited tenders from selected organisations or has otherwise procured submission of tenders, the Tenderer acknowledges that the Purchaser may decline to consider or accept a Tender from a Tenderer who has not been able to satisfy the Purchaser that it has sufficient financial capacity to satisfactorily perform and complete the Contract in accordance with its terms. The Tenderer may be requested to provide financial information to a party nominated by the Purchaser for the purpose of an assessment by the Purchaser as to the Tenderer’s financial capacity and a failure to provide the requested information, within seven (7) days of such a request, may result in a decision by the Purchaser that the Tenderer does not have sufficient financial capacity to satisfactorily perform and complete the Contract in accordance with its terms.
    2. The Purchaser shall evaluate Conforming Tenders in accordance with the tender evaluation criteria contained in Schedule 1 to the Conditions of Tender 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. The Purchaser, 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. Where both Conforming and Alternative Tenders have been evaluated, the Purchaser may accept a Tender which on a view of all the circumstances represents the best value for money for Government determined in accordance with the Queensland Procurement Policy.
    3. 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.
    4. The Tenderer must provide such additional information as may be requested by the Purchaser, including relating to compliance with the Ethical Supplier Threshold and Ethical Supplier Mandate.
    5. 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 Purchaser and the tender evaluation panel for its information and verification, for the purposes of Tender evaluation.
    6. In the evaluation of Tenders (if any) in accordance with clause 7.2, the Purchaser may, without being under any obligation to do so, in its absolute discretion and at any time, 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), shortlist or prefer any one or more Tenderers, and discuss or negotiate with or receive presentation, further submissions or final offers from, any one or more Tenderers in respect of their Tender, in such a manner, and as to such aspects of the Tender, as the Purchaser determines, including price.
    7. The Tenderer shall have in place the quality system nominated by the Purchaser in the Contract (if any).
    8. If required by the Tender Documents, the Tenderer acknowledges and agrees that if awarded a Contract as a result of submitting a tender, it shall comply with the requirements of the Conditions of Working with QBuild document and, prior to commencing the Works, be registered as a QBuild Registered Contractor.

### RIGHT TO INFORMATION AND DISCLOSURE

* + 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.
    2. Information contained in a Tender is potentially subject to disclosure to third parties. In the assessment of any disclosure required by the Purchaser 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.
    3. Notwithstanding any other provision of the Tender Documents or a tender, if a tender is accepted, the Purchaser may publish on a Queensland Government website or by any other means, Contract information including:

the name and address of the Purchaser and the successful Tenderer;

a description of the goods and/or services to be provided pursuant to the Contract;

the date of award of Contract (including the relevant stages if the Contract involves more than one stage);

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); and

the procurement method used.

* + 1. For open tenders, where the Tender Sum has a weighting of 100% in the Tender Evaluation Criteria, the Purchaser may publish the names of all Tenderers and lump sum tender sums tendered.

### TENDERER WARRANTIES

* + 1. The Tenderer warrants that in submitting its Tender, except as expressly disclosed in its Tender:

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 Purchaser), 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;

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;

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;

it shall maintain the skill and expertise necessary to complete the work under the Contract for the duration of the Contract;

all persons nominated in the Tender as key personnel will remain working on the project to the extent indicated in the Tender unless the Purchaser otherwise consents in writing;

it will fulfil all aspects of the Tender, including without limitation the Tenderer’s Tender evaluation criteria offers;

it will comply with the Ethical Supplier Threshold, the Ethical Supplier Mandate and the Supplier Code of Conduct;

it will cooperate with the Purchaser, 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;

it will fulfil all obligations required in respect of Queensland Government policies; and

it will give the Purchaser prior notice of any likely change in circumstances in respect of this clause 9.

* + 1. The Tenderer agrees that the warranties given in clause 9 shall form part of the proposed Contract and a breach of any of those warranties shall be a substantial breach of Contract under the proposed Contract.

### ETHICAL SUPPLIER THRESHOLD

* + 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.
    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 Purchaser’s Contact Officer of the change to the Tenderer’s response.
    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 Purchaser may:

in accordance with clause 6.2, decline to evaluate the Tender, as if it were an Alternative Tender; or

in accordance with clause 6.1, decline to accept the Tender.

### ETHICAL SUPPLIER MANDATE

* + 1. The Purchaser 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.
    2. Notwithstanding any other provision of the Tender Documents or a tender, the Tenderer acknowledges and agrees that the Purchaser 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.

SCHEDULE 1 – TENDER EVALUATION

### CONFORMING TENDER

* + 1. The Purchaser will determine whether a Tender is an Alternative Tender or Conforming Tender and, in doing so, will have regard, without limitation, to:

whether the Tender contains errors of an administrative nature which do not amend or change the substance of the Tender;

whether the Tender contains clarification of an ambiguity; and

the extent to which the Tender does not contain all the documents required by the Tender Documents to be submitted.

* + 1. In making a determination, the Purchaser’s consideration will not be limited to the matters nominated at a), b) and c) above.
    2. Where, in addition to the Tender Form, the Tenderer is required to submit information addressing other Tender evaluation criteria and where the Tender fails to address any of the criteria then the Tender will be deemed to be an Alternative Tender. Where the Tenderer is required to submit information addressing Tender evaluation criteria in addition to the Tender Form the Tenderer must be able to prove and demonstrate ability against each of the criteria. If, in the opinion of the Purchaser, in any criteria, the Tenderer fails to demonstrate a satisfactory ability in relation to that criterion, the Purchaser may decline to further evaluate the Tender. Without limiting the foregoing, if the criteria have points allocated to them and the Tenderer receives a point score less than 50% of the highest possible point score for a given criterion, the Purchaser, in its absolute discretion, may decline to further evaluate the Tender.
    3. Any Tender that contains qualifications will be deemed to be an Alternative Tender.

### EVALUATION PROCESS

* + 1. The Tender evaluation process will involve an assessment of the Tender received against the criteria listed below. The evaluation process may also involve discussions with Tenderers, referees, and undertaking financial, corporate and other checks.
    2. The Purchaser may require shortlisted Tenderers, as part of the evaluation process, to participate in a formal clarification process to clarify and confirm any or all details of the Tender.

### EVALUATION CRITERIA

* + 1. The criteria against which the Tender will be evaluated against includes:

Mandatory criteria

*<<insert>>*

*<<insert>>*

Weighted criteria

*<<insert>>*

*<<insert>>*

*<<insert>*