# Conditions of Tender

|  |  |
| --- | --- |
| Project Name |  |
| Project Number |  |

## CONDITIONS OF TENDER

1. These Conditions of Tender apply to:
   1. Tenders submitted through an electronic tender system (electronic tender); and
   2. Tenders submitted in hardcopy format (hardcopy tender).
2. 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.
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:

* 1. complies in every respect with the requirements of the Tender Documents including (without limitation) the Conditions of Tender; and
  2. does not contain provisions not required or not allowed by the Tender Documents;

‘electronic tender system’ refers to:

* 1. the Department of Energy and Public Works QTender;
  2. the Department of Energy and Public Works QBuild eTender; or
  3. another Information System, specified in the Tender Form;

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

‘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.

1. The “Tender Documents” comprise:
   1. the Tender Form;
   2. the letter of invitation to tender (if any);
   3. these Conditions of Tender;
   4. the Australian Standard® Code of Tendering (AS4120-1994) as amended by these Conditions of Tender;
   5. the Conditions of Contract for Minor Works;
   6. the Specification and Drawings (if any);
   7. any documents or parts of documents expressly referred to in the Tender Documents; and
   8. any other documents as are issued and/or referred to by the Principal for the purposes of tendering;
   9. 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. AS4120-1994 is available for purchase at the Standards Australia Webstore, <http://www.standards.org.au>.
3. 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.
4. 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.
5. A party issued with Tender Documents:
   1. 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;
   2. 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
   3. 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.
6. For hardcopy tender:
   1. The Tender shall be submitted in hardcopy format, in a sealed envelope, addressed and delivered to the Tender lodgement address – hardcopy tender.
   2. 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 Principal.
   3. 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.
7. For electronic tender:
   1. Subject to clause 10(c), the Tender shall be submitted in electronic format delivered to the electronic tender system indicated as the Tender lodgement address – electronic tender.
   2. 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.
   3. In the event of:
      1. 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 10(a); or
      2. 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 10(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.

* 1. If a hardcopy or email Tender is submitted pursuant to clause 10(c), the Tender shall:
     1. include the Project Name and Project Number, the Time for close of Tender and the Tenderer’s name and address; and
     2. 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 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.

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.
3. 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.
4. 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.
5. Notwithstanding the evaluation of Tenders (if any) in accordance with clause 18, the Principal 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.
6. Without derogating from the provisions in clause 15, the Principal may, in its absolute discretion, decline to evaluate any Tender that it has determined to be an Alternative Tender.
7. Notwithstanding that the Principal may have invited tenders from selected organisations or has otherwise procured submission of tenders, the Tenderer acknowledges that 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. 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 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 Principal that the Tenderer does not have sufficient financial capacity to satisfactorily perform and complete the Contract in accordance with its terms.
8. The Principal 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 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. Where both Conforming and Alternative Tenders have been evaluated, the Principal 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.
9. 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. The Tenderer must provide such additional information as may be requested by the Principal, including relating to compliance with the Ethical Supplier Threshold and Ethical Supplier Mandate.
11. 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.
12. In the evaluation of Tenders (if any) in accordance with clause 18, the Principal 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 Principal determines, including price.
13. The Tenderer shall have in place the quality system nominated by the Principal in the Contract (if any).
14. 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.
15. 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.
16. 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.
17. 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:
    1. the name and address of the Principal and the successful Tenderer;
    2. a description of the goods and/or services to be provided pursuant to the Contract;
    3. the date of award of Contract (including the relevant stages if the Contract involves more than one stage);
    4. 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
    5. the procurement method used.
18. 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.
19. The Tenderer warrants that in submitting its Tender, except as expressly disclosed in its Tender:
    1. 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;
    2. 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;
    3. 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;
    4. it shall maintain the skill and expertise necessary to complete the work under the Contract for the duration of the Contract;
    5. 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;
    6. it will fulfil all aspects of the Tender, including without limitation the Tenderer’s Tender evaluation criteria offers;
    7. it will comply with the Ethical Supplier Threshold, the Ethical Supplier Mandate and the Supplier Code of Conduct;
    8. 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;
    9. it will fulfil all obligations required in respect of Queensland Government policies; and
    10. it will give the Principal prior notice of any likely change in circumstances in respect of this clause 29.
20. The Tenderer agrees that the warranties given in clause 29 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.
21. 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.
22. 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.
23. 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:
    1. in accordance with clause 16, decline to evaluate the Tender, as if it were an Alternative Tender; or
    2. in accordance with clause 15, decline to accept the Tender.
24. 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.
25. 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.

*[DELETE SCHEDULE 1 IF NOT APPLICABLE]*

## 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 has 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 allocated points, **Tenderers** are not required to provide information in relation to any other criteria.

|  |
| --- |
| ***GUIDE NOTE [Delete before publishing]***   1. ***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.*** 2. ***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.*** |

***Tender Evaluation Criteria – Weighting Method***

|  |
| --- |
| ***GUIDE NOTE [Delete before publishing]***   * ***Use the below format for the Weighting Method and delete the PQM format option.*** * ***Allocate a percentage weighting to Criterion 1 – Price and Criterion 2 – Non-Price Criteria. Then allocate an appropriate weight to each of the criteria under Criterion 2, with the sum of the individual criterion equalling the total percentage allocated to Criterion 2.*** |

*Criterion 1 Price Criterion - Tender Sum Weighting ……… %*

*Criterion 2 Non-Price Criteria Weighting (total) ……… %*

The Tenderer is required to address each of the following:

1. Project Specific Objectives Sub-Weighting ……… %

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

1. Project Specific Objectives Sub-Weighting ……… %

EXAMPLE [delete before publishing]: Resource Strategy including key personnel

1. Project Specific Objectives Sub-Weighting ……… %

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 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 and resource commitment level (percentage of time allocated to the project);*** * ***Demonstrate how opportunities for local suppliers are optimised; 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 – PQM Method***

|  |
| --- |
| ***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*

*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.

1. Project Specific Objectives Sub-Points ………

EXAMPLE [delete before publishing]: Resource Strategy including Key Personnel.

1. 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*** * ***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**

|  |
| --- |
| Schedule [INSERT IN PRELIMINARIES / DELETE FROM CONDITIONS OF TENDER]DELETE THIS GUIDE NOTE This schedule is to form part of the preliminaries section of the Tender Documents for ‘design and construct’ projects. Project Managers to complete as appropriate – the following is a guide only.  This schedule should not be included for “construct only” projects  The Project Manager must be mindful of the costs of tendering and ensure abortive design work by unsuccessful Tenderers is kept to a minimum.  Example Tender requirements for design and construct Tenderers:  Tenderers are required to submit as part of the tender the following:  A development proposal based on the Tender Documents. The development proposal is required to contain:   1. a statement of the names of consultants which the Tenderer proposes to engage and the extent of services envisaged; 2. a time program indicating all activities occurring during the time required for the execution of the **work under the** **Contract**, including design development, documentation, construction and commissioning activities; 3. the projected cash flow; 4. an architectural sketch plan of the proposed site development and surrounding infrastructure to a minimum scale of 1:500; 5. architectural sketch plans, elevations and typical sections of the building(s) to a minimum scale of 1:200; 6. civil/structural schematic drawings to a minimum scale of 1:200; 7. schematic drawings for mechanical, electrical, fire and other services to a minimum scale of 1:200; 8. schedules of finishes; and 9. schedules of fixtures, fittings and equipment including quantities, brand names, model numbers and costs. |