# Conditions of Offer

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| Project Name |  |
| Project Number |  |

## CONDITIONS OF OFFER

Consultancy Offer using Short Form Consultancy Services Conditions of Contract

### INTERPRETATION

These Conditions of *Offer* apply to:

* 1. *Offers* submitted through an *Information System* (electronic offer); and
	2. *Offers* submitted in hardcopy format (hardcopy offer).

Meanings assigned to words and expressions in the Short Form Consultancy Services Conditions of Contract shall apply to those words and expressions when used in the Invitation Documents and except where the context otherwise requires, ‘include’ is not a word of limitation.

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

*Alternative Offer* means any Offer that is not a *Conforming Offer*;

*Client’s Contact Officer* means the Client’s Contact Officer specified in the Offer Form;

*Conforming Offer* means an *Offer* made on the basis of the Invitation Documents for the execution of the whole of the *Services* under the *Contract* in accordance with the Invitation Documents and which:

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

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

*Offer* means an offer submitted by an *Offeror*;

*Offeror* means a party submitting an *Offer* and includes a party invited directly or indirectly by the *Client* to submit an *Offer*.

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

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

### INVITATION DOCUMENTS

“Invitation Documents” comprise:

* + 1. the Invitation for *Offers*;
		2. the Offer Form;
		3. these Conditions of Offer;
		4. the Australian Standard® Code of Ethics and Procedures for the Selection of Consultants (AS4121-1994) as amended by these Conditions of Offer;
		5. the Short Form Consultancy Services Conditions of Contract;
		6. the *Client’s* *Terms of Reference*;
		7. any documents or parts of documents expressly referred to in the Invitation Documents; and
		8. any other documents as are issued and/or referred to by the *Client* for the purpose of inviting *Offers;*
		9. but excluding the Notice to Offerors and any other document or part thereof which is expressly stated to be excluded from the Invitation Documents.

To the extent of any discrepancy or inconsistency between these Conditions of Offer and AS4121-1994, these Conditions of Offer shall prevail.

For hardcopy *Offers*, a copy of the Invitation Documents (excluding AS4121-1994) is supplied for the purposes of inviting *Offers*.

For electronic *Offers*, an electronic copy of the Invitation Documents (excluding AS4121-1994) is available at the electronic location stated in the Invitation for *Offers* for the purposes of inviting *Offers*.

AS4121-1994 is available for purchase at the Standards Australia Webstore, <http://www.standards.org.au>.

All information contained in the Invitation Documents which is not in the public domain is to be treated as confidential (“Confidential Information”). Confidential Information contained in the Invitation Documents is only to be used for the purpose of preparing an *Offer* in response to the Invitation to *Offer* and the Invitation Documents.

A party issued with Invitation 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.
		3. fully indemnifies the *Client* 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 OFFER

For hardcopy *Offer:*

* + 1. The *Offer* shall be submitted in hardcopy format, in a sealed envelope, addressed and delivered to the *Offer lodgement* address – hardcopy offer.
		2. The envelope shall be endorsed with the Project Name and Project Number, the *Time for close of Offer* and the *Offeror’s* name and address.
		3. The *Offer* shall be lodged in the offer box at the *Offer lodgement* address – hardcopy offer by being placed therein before the *Time for close of Offer*.
		4. Any *Offer*, or part thereof, not in the offer box before the *Time for close of Offer* may be rejected at the discretion of the *Client*.
		5. In exercising its discretion as to the rejection of any *Offer*, the *Client* shall, amongst other factors, consider any evidence that such *Offer* was dispatched to the *Offer lodgement address* – hardcopy offer in sufficient time to reach that office and be placed in the offer box under normal circumstances before the *Time for close of Offer*.

For electronic *Offer:*

* + 1. Subject to clause 3.2(c), the *Offer* shall be submitted in electronic format delivered to the *Client’s Information System* indicated as the *Offer lodgement address* – electronic offer.
		2. The *Offer* shall be deemed to have been delivered to the *Client’s* *Information System* designated to receive the electronic communications at the date and time stated on the electronic receipt issued to the *Offeror*. Any *Offer*, or part thereof, that has not been delivered to the designated *Information* *System* before the *Time for close of Offer* may be rejected at the discretion of the *Client*.
		3. In the event of:
			1. a technical failure of the *Offeror’s* *Information* *System* or of the *Client’s* *Information System*, resulting in an inability to submit the *Offer* in electronic format as required by clause 3.2 (a); or
			2. a failure of the *Client’s* *Information System* to issue an electronic receipt to the *Offeror* acknowledging receipt of an electronic *Offer* from the *Offeror* in accordance with clause 3.2 (a);

the *Client’s Contact Officer* may, on request by the *Offeror*, allow the *Offer* to be submitted in either hardcopy format, in a sealed envelope, delivered to the offer box location advised by the *Client’s Contact Officer*, or by email, to the email address advised by the *Client’s Contact Officer*.

* + 1. If a hardcopy or email *Offer* is submitted pursuant to clause 3.2(c), the *Offer* shall:
			1. include the Project Name and Project Number, the *Time for close of Offer* and the *Offeror’s* name and address; and
			2. be lodged in the offer box at the location advised by the *Client’s Contact Officer* by being placed therein, or received by email to the advised email address, before the *Time for close of Offer*. Hardcopy or email *Offers* not in the offer box or email inbox respectively, before the *Time for close of Offer* may be rejected at the discretion of the *Client*.

An *Offer* received by a means other than expressly provided for in the Invitation for *Offers* and these Conditions of Offer may not be considered.

### OFFER REQUIREMENTS

The *Offeror* shall complete and sign all documents that are required to be completed, signed and lodged as the *Offer*.

The *Offer* must be lodged in accordance with the instructions in the Invitation Documents and include all documents required by the Invitation Documents.

The *Offeror* and all relevant third parties shall do all acts and things required by the *Client* for the purposes of giving effect to these Conditions of Offer.

### INFORMATION

Unless otherwise agreed with the *Client’s Contact Officer*, all communications between the *Offeror* and the *Client* upon which the *Offeror* intends to rely for the purposes of its *Offer* shall be in writing and addressed to or issued by the *Client’s Contact Officer*.

The *Offeror* shall not communicate with any person or corporation who is the intended owner, occupant, operator or manager of any facility the subject of the *Offer* except with the express written approval of the *Client’s Contact Officer*.

The *Client* will not be liable for any claim on the grounds of erroneous or insufficient information.

The *Client* shall not be bound by, and the *Offeror* may not rely upon, any oral advice or information given or furnished in respect of the *Offer* but shall be bound only by written or electronically transferred advice or information furnished by or on behalf of the *Client*.

For the purposes of evaluation of *Offers*, *Offerors* shall provide such additional information as may be requested by the *Client*, including financial data.

### OFFEROR TO INFORM ITSELF

The *Offeror* 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 *Offer*.

### OFFER FROM GOVERNMENT AGENCIES

The *Client* may invite, consider or accept an *Offer* from one or more government agencies.

### COSTS OF OFFERING

Costs of submitting an *Offer* shall be borne by the *Offeror*.

### CLIENT NOT BOUND

Notwithstanding the evaluation of *Offers* (if any) in accordance with clause 10, the *Client* may in its absolute discretion and at any time accept, or decline to accept, any *Offer* or any part of an *Offer*. Without limitation, where the Invitation Documents require the *Offeror* to submit prices and/or fees (referred to together as ‘fees’) with reference to particular parts or stages of the *Services*, the *Client* may accept an *Offeror’s* Offer for a particular part or stage only, for the whole of the *Services* including all parts or stages, or for a particular part or stage initially with the discretion to accept another part or stage, or parts or stages, at a later date. If the *Client* has initially accepted only a particular part or stage of an *Offeror’s* Offer, the *Client* may in its absolute discretion but without any obligation to do so, at any time accept the *Offeror’s* *Offer* in relation to other parts or stages.

For the avoidance of doubt and notwithstanding any other provision of the Conditions of Offer:

* + 1. if the *Client* decides to initially accept an *Offeror’s* *Offer* for a particular part or stage only, the *Client* shall engage the *Offeror*:
			1. to perform and complete the *Services* under the *Contract* in respect of the part or stage accepted for the fees offered in respect of that part or stage; and
			2. only if the *Client* provides a written notification that the *Offeror’s* *Offer* for another part or stage is accepted, to perform and complete the *Services* required in respect of the parts or stages accepted for the fees offered in respect of the parts or stages accepted; and
		2. the fees offered for each part or stage of the *Services* shall be capable of acceptance by the *Client* in accordance with the relevant provisions in the *Contract* without adjustment other than in accordance with the *Contract* at any time prior to the *Client* advising of the completion of *Services* under the *Contract*; and
		3. the *Client* reserves the right not to proceed with any part or stage under the *Contract*; and
		4. no contract shall exist for a part or stage unless and until the *Client* provides written notification that the *Offeror’s* *Offer* for that part or stage is accepted; and
		5. there shall be no fees, costs, damages or other entitlement payable to the *Offeror* in relation to the *Client* not accepting any parts or stages of *Offeror’s* *Offer* including no entitlement to payment in relation to a part or stage not accepted or in relation to the *Client* having a part or stage carried out by others.

Without derogating from the provisions in clause 9.1, the *Client* may, in its absolute discretion, decline to evaluate any *Offer* that it has determined to be an *Alternative* *Offer*.

### OFFER EVALUATION

The *Client* shall evaluate *Conforming Offers* in accordance with the *Offer* 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*.

The *Client*, if it determines to evaluate an *Alternative Offer*, shall evaluate such *Alternative Offer* 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 *Offer* evaluation criteria contained in Schedule 1.

Where both *Conforming Offers* and *Alternative Offers* have been evaluated, the *Client* may accept the *Offer* which on a view of all circumstances represents the best value for money for government determined in accordance with the *Queensland Procurement Policy*.

In the event that the *Offer* contains an ambiguity in relation to the Offer Sum, then the “Offer Sum” inclusive of GST amount in words stated in the Offer Form shall prevail.

The *Offeror* shall provide such additional information as may be requested by the *Client*, including relating to compliance with the *Ethical Supplier Threshold,* the *Ethical Supplier Mandate* and the *Supplier Code of Conduct*.

Information relating to the *Offeror* including, without limitation, that relevant to the evaluation criteria and the *Offeror’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 *Client* and the *Offer* evaluation panel for its information and verification, for the purposes of *Offer* evaluation.

### OFFER EVALUATION PROCESS

In the evaluation of *Offers* (if any) in accordance with clause 10, the *Client* may, without being under any obligation to do so, in its absolute discretion and at any time:

* + 1. seek clarification in respect of any aspect of an *Offeror’s* *Offer* (including to request the *Offeror* to provide additional information, documents or evidence in connection with its *Offer*);
		2. shortlist or prefer any one or more *Offerors*; and
		3. discuss or negotiate with, or receive presentations, further submissions or final offers from, any one or more *Offerors* in respect of their *Offer*, in such manner, and as to such aspects of the *Offer*, as the *Client* determines, including fees.

The provisions of clause 11.1 and any exercise by the *Client* of its rights under clause 11.1:

* + 1. is without prejudice to any other rights of the *Client*;
		2. apply notwithstanding clause 6.6 of AS4121-1994;
		3. except to the extent notified otherwise by the *Client* in writing, are subject to the other express provisions of these Conditions of Offer;
		4. shall not give rise to any representation by the *Client* as to the acceptability or otherwise of any *Offer*;
		5. shall not preclude the *Client* from at any time considering or accepting any *Offer* (whether or not the subject of the exercise by the *Client* of its rights under clause 11.1);
		6. shall not give rise to any obligation (implied or otherwise) on the *Client* except to the extent expressly provided in these Conditions of Offer or notified by the *Client* in writing.

Except to the extent the *Client* expressly agrees otherwise, the provisions of these Conditions of Offer shall continue to apply to any process which the *Client* may undertake under clause 11.1 in connection with the evaluation of *Offers*.

### PROJECT FUNDING

The *Client* will not provide particulars of project funding arrangements to *Offerors*.

### INTELLECTUAL PROPERTY

The *Intellectual Property Rights* in any material included in an *Offer* created by the *Offeror* and relating specifically to the *Services* to be provided under any contract the subject of these Conditions of Offer vests in the *Client* upon acceptance by the *Client* of an *Offer* (or any part thereof).

To the extent that any material submitted by an *Offeror* in its *Offer* is the subject of pre-existing *Intellectual Property Rights* of third parties, the *Offeror* warrants that it is able to procure for the *Client* an irrevocable, royalty free licence to use, adapt, reproduce, publish and sublicense on the same terms all such *Intellectual Property Rights* and agrees to obtain such licence upon acceptance of its *Offer* (or any part thereof).

The *Offeror* indemnifies the *Client* against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of any claim by a third party against the *Client* alleging that the material contained in the *Offer* or acts by the *Client* in relation to the *Client’s* use of the material contained in the *Offer* infringe any *Intellectual Property Rights* of a third party.

### RIGHT TO INFORMATION AND DISCLOSURE

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.

Information contained in an *Offer* is potentially subject to disclosure to third parties. In the assessment of any disclosure required by the *Client* pursuant to the RTI Act, the *Offeror* accepts that any information provided in its *Offer*, including information marked as confidential, will be assessed for disclosure in accordance with the terms of the RTI Act.

Notwithstanding any other provision of the Invitation Documents or an *Offer*, if an *Offer* is accepted, the *Client* may publish on a Queensland Government website or by any other means, *Contract* information including:

* + 1. the name and address of the *Client* and the successful *Offeror*;
		2. a description of *Services* to be provided pursuant to the *Contract*;
		3. the date of award of *Contract* (including the relevant parts or stages if the *Contract* involves more than one part or 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 *Offers*);
		5. the procurement method used; and
		6. for contracts with a value of $10 million or more, invitation details and summary information in respect of the *Contract*, between the *Client* and the successful *Offeror* and/or reasons for non-disclosure of procurement results (if applicable).

### REGISTRATION AS A PREQUALIFIED CONSULTANT

If required by the Invitation Documents, the *Offeror* must be registered on the Queensland Government Prequalification System (“PQC System”) including being registered at the appropriate level, to be eligible to submit an *Offer*.

If clause 15.1 applies, the *Client* may decline to consider or accept an *Offer* from an *Offeror* who, prior to the award of *Contract*, does not hold a Certificate of Prequalification, or is not registered at the appropriate level for the *Services* the subject of the *Offer*, pursuant to the PQC System released and current at the time and date at which *Offers* were invited.

If clause 15.1 does not apply, the *Offeror* must include the following information with its *Offer*:

* + 1. in the case of an *Offer* by an individual, the person’s full name and address;
		2. in the case of an *Offer* under a business name, the names and addresses of all proprietors and the address of the principal place of business;
		3. in the case of an *Offer* by a company, the full name of the company, the Australian Company Number, the Australian Business Number and the registered office of the company; and,
		4. details of its registration with any other Queensland Government Agency.

### OFFEROR WARRANTIES

The *Offeror* warrants that in submitting its *Offer*, except as expressly disclosed in its *Offer*:

* + 1. it has no knowledge of the price/fees of any other *Offeror*, nor has it communicated with any other *Offeror* in relation to the *Offeror’s* price/fees, or a price above or below which an *Offeror* may submit an *Offer* (excluding any pricing advised by the *Client*), nor has it entered into any contract, arrangement or understanding with another *Offeror* to the effect that the *Offeror* or another *Offeror* will submit a non-competitive price, for the work the subject of the *Offer*, at time of submission of its *Offer*;
		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 *Offer* 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 *Offeror*, nor received any money or allowance from or on behalf of any other *Offeror*, relating in any way to its *Offer* or any contract that may be entered into consequent thereon;
		4. it shall maintain the skill and expertise necessary to complete the *Services* under the *Contract* for the duration of the *Contract*;
		5. all persons nominated in the *Offer* as key personnel will remain working on the project to the extent indicated in the *Offer* unless the *Client* otherwise consents in writing;
		6. it will fulfil all aspects of the *Offer*, including without limitation the *Offeror’s* *Offer* 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 *Client*, 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 *Offeror’s* compliance with the *Ethical Supplier Threshold*;
		9. it will fulfil all obligations required in respect of Queensland Government polices; and
		10. it will give the *Client* prior notice of any likely change in circumstances in respect of this clause 16.

The *Offeror* 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*.

In addition to any other actions the *Client* may take, any breach of the warranties given in this clause 16 will result in a review of the *Offeror’s* PQC registration status.

### ETHICAL SUPPLIER THRESHOLD

The *Offeror* must comply with the *Ethical Supplier Threshold* and the *Offeror* must provide true and correct responses to the criteria set out in the *Ethical Supplier Threshold* questionnaire on the Offer Form.

If, at any time after the *Offeror* submits its *Offer*, the *Offeror’s* responses to the criteria set out in the *Ethical Supplier Threshold* questionnaire are no longer true and correct for any reason, the *Offeror* must promptly notify the *Client’s Contact Officer* of the change to the *Offeror’s* response.

The *Offeror* acknowledges that if, at any time, the *Offeror’s* response to a criterion set out in the *Ethical Supplier Threshold* questionnaire on the Offer Form is “yes”, the *Client* may:

* + 1. in accordance with clause 9.3, decline to evaluate the *Offer*, as if it were an *Alternative Offer*; or
		2. in accordance with clause 9.1, decline to accept the *Offer*.

### ETHICAL SUPPLIER MANDATE

The *Client* may decline to consider or accept an *Offer* from an *Offeror* who, at the date of submission of the *Offer* 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 *Offers* were invited.

Notwithstanding any other provision of the *Invitation Documents* or an *Offer*, the *Offeror* acknowledges and agrees that the *Client* may refer matters about the *Offeror’s* compliance with the *Ethical Supplier Mandate* and *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 *Offeror’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 *Offeror*.

### PERFORMANCE REPORTING

The Offeror acknowledge that:

* + 1. if the Offeror is awarded a Contract, and the Invitation Documents require the Offeror to be registered on the PQC System, the Client will, in accordance with the PQC System, prepare and submit performance reports to the PQC Registrar. The performance reports may include, amongst other things, information regarding;
			1. achievements or compliance with representations made in response to evaluation criteria listed in Schedule 1 to the Conditions of Offer;
			2. compliance with any legislation relating to workplace health and safety, industrial relations, taxation and workers compensation legislation; and
			3. compliance with the provisions of the Contract, including those clauses concerning Collusive Arrangements (clause 1.6) and Subcontracting (clause 20);
		2. 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 Offeror is reminded that by being registered pursuant to the PQC System they have provided an undertaking that they will abide by the Code of Practice;
		3. an adverse performance report or non-compliance with the Code of Practice will result in a review of the Consultant’s PQC registration status.

## SCHEDULE 1 – Offer Evaluation

Client’s Determination

The *Client* shall determine whether an *Offer* is an *Alternative Offer* or *Conforming Offer* and, in doing so, shall have regard to the following, without limitation:

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

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

Where, in addition to the price and/or fees submitted, the *Offeror* is required to submit information addressing other evaluation criteria and the *Offeror* fails to address any of the criteria then the *Offer* shall be deemed to be an *Alternative Offer*.

Any *Offer* that contains qualifications shall be deemed to be an *Alternative Offer*.

#### Offer Evaluation Criteria – Conforming Offers

##### Criterion 1 Price Criterion - Price / Fees Weighting %

##### Criterion 2 Non-Price Criteria Weighting %

[Include Non-Price Criteria as Appropriate]

[Include Non-Price Criteria as Appropriate]

The *Offeror* must objectively and numerically identify the extent to which the *Offer* addresses the above criteria and otherwise substantiate the *Offer* in respect of the criteria in its submission. Responses to the Criterion 1 shall be bound separately to responses to Criterion 2, and Criterion 2 should not include any information on the prices and/or fees offered.