

Conditions of Offer

1 Interpretation

These Conditions of Offer may be used where the Customer is seeking offers to enter into a Contract.

The Definitions and Interpretations (version 3.2 published February 2024) will apply to these Invitation Conditions, available via this [website](#).

2 Invitation process

2.1. Supplier acceptance

By participating in the Invitation Process, the Supplier accepts these ITO Conditions.

By submitting an offer, the Supplier offers to enter into a Contract with the Customer under these terms for the Goods, Services and Deliverables and acknowledges that the Customer may accept the offer during the Offer Validity Period.

2.2. Customer discretion

The Customer may make any changes to the Invitation Process in its absolute discretion, by notifying the Supplier including by publication on the Queensland Government QTenders website where it is considered appropriate by the Customer. This may include:

- (a) adding the terms and conditions applicable to the Invitation Process, including terms of the ITO Conditions and/or proposed Contract
- (b) adding or changing requirements
- (c) amending dates including extending the Closing date and time
- (d) amending the evaluation criteria stipulated in the ITO and/or
- (e) cancelling the Invitation Process

Without limitation, the Customer may, during the Invitation Process:

- (a) consider, accept, or reject an offer received after the Closing date and time
- (b) consider, accept, or reject non-Conforming Offers, alternative or innovative offers, offers in part, or multiple offers
- (c) obtain information about the Supplier relevant to the evaluation criteria that may be held by any Government Department or Instrumentality and take the information into account in assessing the offer
- (d) conduct checks on the Supplier with other Queensland Government departments and agencies, and Queensland Government Bodies
- (e) reject any or all offers
- (f) accept an offer that did not progress through all phases of the evaluation process
- (g) amend the evaluation criteria stipulated in the Invitation to Offer document
- (h) exercise discretion in evaluating any subjective evaluation criteria
- (i) negotiate with one or more Suppliers and allow any Supplier to vary its offer
- (j) interview, negotiate or hold discussions with any Supplier on any matter contained (or proposed to be contained) in an offer to the exclusion of others
- (k) request some or all Suppliers to conduct site visits, provide references and additional information, and/or make themselves available for panel interviews
- (l) change the terms and conditions applicable to the Invitation Process, including terms of the proposed Contract; or
- (m) conduct checks on the Supplier or request the Supplier to substantiate to the Customer's satisfaction information supplied by the Supplier during the Invitation Process

The Supplier will not make any claim in connection with a decision by the Customer to exercise or not to exercise any of its rights in relation to the Invitation Process.

2.3. Contract structure

The Suppliers attention is drawn to the fact that the Customer reserves the right, at any time during the term of any Contract established as a result of this Invitation Process to:

- (a) engage other suppliers for the supply of the Goods, Services, and other Deliverables the same or similar to the deliverables and



- (b) enter into Contracts with other suppliers for the supply of Goods, Services and Deliverables, notwithstanding that the other suppliers did not participate in the Invitation Process, for any reason, including if the Customer considers it is necessary or desirable to comply with government policy regarding diversity in supply chains, the achievement of social objectives or in the interest of public health and safety.

2.4. Statistical and other relevant data

Statistical and other relevant data provided in this Invitation Process is not to be construed as a guarantee for providing any business whatsoever by the Customer. The Supplier shall make no claim for anticipated profit or for loss of profit because of any difference between the data provided to assist Suppliers in compiling an offer and the volume of goods or services actually required by the Customer and so provided by the Supplier during the period of the Contract.

2.5. No process contract

The conduct of the Invitation Process does not give rise to any legal or equitable relationship. A Supplier will not be entitled to claim compensation or loss from the Customer for any matter arising out of the Invitation Process, including but not limited to any failure by the Customer to comply with these ITO Conditions.

3 Alternative and/or innovative offers

The Queensland Procurement Policy promotes an outcome focussed approach, seeking opportunities to innovate and improve value for money. Suppliers are encouraged to submit alternative and/or innovative offers where they believe that the alternative will promote the Customer's objectives.

4 No reliance on information

The Supplier is responsible for making its own investigation and assessment about all matters relevant to the Invitation to Offer process, the Requirements, the accuracy of all information and documents provided by or on behalf of the Customer, and all other matters relevant to the Supplier's offer.

5 Supplier cost

Participation in the Invitation Process is at the Supplier's cost. The Customer is not required to pay compensation to the Supplier in relation to the Invitation Process in any circumstances, for any reason.

6 Subject to contract

No Contract will be formed between the Customer and the Supplier unless and until a contract is established in one of the ways identified in either the General Contract Conditions or Comprehensive Contract Conditions as applied in the ITO.

7 Compliance

The Supplier must:

- (a) **(Communication)** direct all inquiries relating to the Invitation to Offer to the Customer's contact person, and not discuss this Invitation Process with any other person except as required to prepare its offer.
- (b) **(Laws)** comply with all Laws, including the *Disability Discrimination Act 1992* (Cth), the *Human Rights Act 2019* (Qld), *Modern Slavery Act 2018* (Cth) and all Acts referenced in the Ethical Supplier Threshold and ensure that the Supplier's actions do not cause the Customer to breach any Laws.
- (c) **(Confidentiality)** keep confidential all Confidential Information which it obtains as part of the Invitation Process, not use it except for the purpose of responding to the Invitation to Offer, and not disclose it except to its Personnel on a need to know basis for the purpose of responding to the Invitation to Offer, or with the Customer's consent, or to the extent required by Law, or to its professional advisors.
- (d) **(Privacy)** if it collects or has access to any Personal Information in connection with the Invitation Process, comply as if it was the Customer with the privacy principles in the Information Privacy Act or the Australian Privacy Principles in the Privacy Act, as applicable, in relation to that Personal Information, and comply with all reasonable directions of the Customer relating to the Personal Information.
- (e) **(No publicity)** not make any public announcements or advertisement relating to the Invitation Process.
- (f) **(Competitive neutrality)** if the Supplier is a government owned business, local government, or Commonwealth, State or Territory or authority, price its offer to comply with the competitive neutrality principles of the Supplier's jurisdiction.
- (g) **(Personnel)** ensure that its Personnel also comply with these requirements.
- (h) **(Insurances)** if required in Part B – Contract Details, the Supplier is to provide relevant and current insurance certificates with their offer. If requested after the closing date for offers, the Supplier is required to provide relevant and current insurance certificates within five (5) Business Days of the request from the Customer unless otherwise indicated by the Customer.

8 Warranties

8.1. Anti-competitive conduct

The Supplier warrants that neither it, nor its Personnel have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in connection with the Invitation Process, or any actual or potential Contract with any entity for goods and services similar to the Goods and Services.

8.2. Conflict of interest

The Supplier warrants that neither it nor its Personnel have or are likely to have a Conflict of Interest in connection with this Invitation Process, except as disclosed in the Supplier's offer.

The Supplier warrants that it will not, and it will ensure that its Personnel do not, place themselves in a position that may give rise to a Conflict of Interest between the interest of the Customer and the Supplier's interests during the Invitation Process and the term of any Contract subsequently entered as a result of this Invitation Process.

If during the Invitation Process period, a Conflict of Interest arises, or appears likely to arise, the Supplier must notify the Customer immediately and take such steps to resolve or otherwise deal with the Conflict of Interest to the reasonable satisfaction of the Customer.

8.3. Criminal organisation

The Supplier warrants that the Supplier and, to the best of its knowledge and belief having made reasonable enquiries, its Personnel, have not been convicted of an offence under the Criminal Code in the *Criminal Code Act 1899* (Qld) where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of the Criminal Code.

8.4. Accuracy of information

The Supplier warrants that all representations, declarations, statements, information, and documents made or provided by the Supplier (including its representatives) in connection with the Invitation Process ('**Supplier Information**') are complete, accurate, up-to-date, and not misleading in any way.

8.5. Warranties are ongoing

The warranties in this section are provided as at the date of the Supplier's offer to the Invitation Process and on an ongoing basis until the later of the Customer notifying the Supplier that its offer has been rejected and expiry or termination of any Contract entered pursuant to the Invitation Process ("relevant period").

The Supplier warrants that it will immediately notify the Customer if it becomes aware that any warranty made in this section was inaccurate, incomplete, out of date or misleading in any way when made, or becomes inaccurate, incomplete, out of date or misleading in any way, during the relevant period.

8.6. Breach of warranty

In addition to any other remedies available to it under Law or contract, the Customer may, in its absolute discretion (but is not required to), immediately disqualify a Supplier from the Invitation Process, or terminate the Contract with the Supplier which is subsequently entered into as a result of the Invitation Process, where it believes the Supplier has breached any warranty in this clause.

9 Section 89 of the Criminal Code

Section 89 (1) of the Criminal Code in the *Criminal Code Act 1899* (Qld) makes it an offence for a person employed in the public service to knowingly acquire or hold, other than as a member of a registered joint stock company consisting of more than 20 persons, a private interest in a contract or agreement which is made on account of the public service with respect to any matter concerning the department of the service in which the person is employed. Section 89 (2) provides that the person does not commit an offence if, before the person acquires or starts to hold the private interest, the person discloses the nature of the interest to the chief executive of the department for which they are employed and the chief executive authorises the person in writing, to hold or acquire the interest

For the purpose of this clause 9, an 'employee' is an individual who receives or is entitled to receive salary or wages through the payroll system of the Customer.

The Supplier warrants that it will not submit an offer which, if accepted, would result in an individual being in breach of section 89 of the Criminal Code 1899 (Qld).

10 Access and inspection

The Supplier must, on reasonable prior written notice from the Customer, give the Customer reasonable access to the Supplier's premises and to Supplier documentation, records and Personnel, to enable the Customer or a third party engaged by the Customer to verify:

- (a) the completeness and accuracy of information provided by the Supplier in connection with the Invitation Process; and
- (b) the Supplier's compliance with its obligations under these ITO Conditions.

11 Supplier confidential information

The Customer will keep confidential all Confidential Information of the Supplier which it obtains as part of the Invitation Process.

The Customer may use Supplier Confidential Information for the purposes of the Invitation Process.

The Customer may disclose Supplier Confidential Information:

- (a) to its Personnel for the purposes of the Invitation Process
- (b) as required under the *Right to Information Act 2009* (Qld) or Information Privacy Act
- (c) as required by Law
- (d) to a Minister, their advisors or Parliament
- (e) to its professional advisors.

The Customer may publish information about the Invitation Process and any resulting Contract on the Queensland Government Open Data, where required or recommended by the Queensland Procurement Policy.