

**Infrastructure Contract – Sole Invitation**

**C7014 Conditions of Offer**

**November 2019**

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## 1 Definitions and interpretations

### 1.1 Defined terms

Except where the context otherwise requires, in these Conditions of Offer and in the Offer Documents, all words and expressions shall have the meanings given to them in the Conditions of Contract and the following words and expressions shall have the meanings given to them below:

**'Conditional Agreement'** means the Form C7013 signed by the Principal and the Offeror after agreeing on price and any changes to the Offer Documents. The Principal and Offeror will comply with all the conditions and matters as set or reasonably inferred in this Agreement.

**'Conforming Offer'** means an Offer received from the Offeror which conforms in all respects to the requirements of the Offer Documents.

**'department'** means the Queensland Government Department of Transport and Main Roads.

**'Invitation for Offer'** means the invitation by the Principal to the Offeror to make an offer for the performance of the Works described in the Offer Documents.

**'Notice to Offeror'** means a notice issued by the Principal to the Offeror relating to the Offer Documents after the date of issue of the Offer Documents by the Principal to the Offeror but before the Time for Lodgement of Offers.

**'Offer'** means an offer by the Offeror to perform the Works described in the Offer Documents.

**'Offer Documents'** means the documents listed in the Invitation for Offer which are issued by the Principal to the Offeror for the purpose of inviting the Offeror to make an Offer.

**'Offeror'** means the name and address of the local government or business unit of the Principal making an Offer to perform the Works described in the Offer Documents.

**'Principal'** means the State of Queensland acting through the Department of Transport and Main Roads.

**'Tender'** means Offer.

**'Tender Documents'** means Offer Documents.

**'Tenderer'** means Offeror.

**'Time for Lodgement'** means the time for lodgement of Offers specified in the Offer Documents.

## **1.2 Interpretation**

- (a) Reference to:
  - i. one gender includes the others;
  - ii. the singular includes the plural and the plural includes the singular;
  - iii. a person includes a body corporate;
  - iv. a party includes the party's executors, Administrators, successors and permitted assigns;
  - v. a legislative requirement includes:
    - A. that legislative requirement as amended or re-enacted from time to time; and
    - B. a legislative requirement enacted in replacement of that legislative requirement;
  - vi. money is to Australian dollars, unless otherwise stated; and
  - vii. a party, where the party is more than one person, means all of them together and each of them separately.
- (b) Measurements of physical quantities shall be in legal units of measurement of Australia within the meaning of the National Measurement Act 1960.
- (c) Communications between the Principal and the Offeror shall be in the English language.
- (d) 'Including' and similar expressions are not words of limitation.
- (e) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (f) Interpretation shall not be affected by the fact that one party drafted the Invitation for Offer.
- (g) Headings and sub-headings do not affect the meaning of this Invitation for Offer.
- (h) If anything to be done under this Invitation for Offer by a day which is not a Business Day, then it shall be done on the next Business Day.

## **2 General**

- (a) All Offers shall be submitted in writing on the forms provided. Any supplementary documents shall be signed and dated.
- (b) All money amounts shall be in Australian currency and where alterations occur shall be initialled by the person making the Offer.
- (c) All liability for stamp duty shall be with the Principal.
- (d) Any Offer which is not a Conforming Offer may be rejected.

- (e) The Principal will not be bound by any oral advice or by any information which is not contained in or specifically referred to in:
  - i. the Offer Documents; or
  - ii. a Notice to Offeror; or
  - iii. correspondence between the Principal and the Offeror, specifically in relation to the Offer or the Invitation to Offer

which are provided by the Principal to the Offeror.

### **3 Offers**

- (a) The Offer shall be lodged at the nominated place, as detailed in the Offer Form (C7012), before the time and date specified for the closing of Offers, as detailed in the Invitation for Offer (C7011). The Offer may be lodged by hand delivery, post or email.
- (b) If requested by the Principal, the Offeror shall submit a hardcopy of the Offer. The hardcopy shall take precedence over any form submitted electronically.

### **4 Legislative and policy requirements**

- i. If required by the Principal, the Contractor shall demonstrate evidence of compliance of the following:
  - (a) The Australian Government Building and Construction WHS Accreditation Scheme (The Scheme) ([www.fsc.gov.au/sites/FSC](http://www.fsc.gov.au/sites/FSC))
  - (b) Australian Government Building Code (the Building Code is available at <http://www.abcc.gov.au/building-code-2016>)
  - (c) The Queensland Code of Practice for the Building and Construction Industry (<http://www.justice.qld.gov.au/corporate/about-us/business-areas/industrial-relations/codes-of-practice-and-guidelines/queensland-code-of-practice-for-the-building-and-construction-industry>)
  - (d) Queensland Government Building and Construction Training Policy (<http://training.qld.gov.au/employers/qld-govt-building-construction-training-policy/index>).
- ii. To comply with the Queensland Procurement Policy (QPP), the Principal expects the Contractor support local businesses by sourcing equipment, materials and services from suppliers based locally to the Project. The Contractor shall give, and shall ensure that its subcontractors give, local subcontractors, vendors and suppliers a full, fair and reasonable opportunity to supply labour, services, materials, plant, machinery, equipment and other items for the Works. "Local" is defined by the Queensland Procurement Policy (QPP). The Tender shall include a completed Tender schedule S4 – Queensland Charter for Local Content Compliance Outline and Tender Schedule S9 – Queensland Procurement Policy compliance outline.

The Contractor shall compile and submit a report monthly to the Administrator, using the Project Outcome Reporting template (template available from [www.statedevelopment.qld.gov.au/resources/charter-for-local-content.html](http://www.statedevelopment.qld.gov.au/resources/charter-for-local-content.html)). The Administrator shall then send the reports to the team in Brisbane via

localcontentreports@tmr.qld.gov.au. This monthly report shall contain data relevant to the work completed up to and including the month (cumulative) to which the Contractor's progress claim relates, identifying businesses meeting the local requirements of the QPP.

**iii. The Ethical Supplier Threshold and Mandate**

- a) In this clause 4(iii),
- a. Ethical Supplier Mandate means the Queensland Government Policy titled 'Ethical Supplier Mandate' or any policy that replaces that policy;
  - b. Ethical Supplier Threshold means the Ethical Supplier Threshold in paragraph 2.3 of the Queensland Procurement Policy;
  - c. Government Department or Instrumentality means any governmental regulator, including Work Health Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission and the Australian Building and Construction Commission; and
  - d. QPP Compliance Unit means the Queensland Procurement Policy (QPP) Compliance Unit, Office of the Chief Advisor – Procurement, Department of Housing and Public Works.
- b) The Tenderer shall comply with the Ethical Supplier Threshold.
- c) The Principal may obtain information about the Tenderer relevant to the Tenderer's compliance with clause 4(iii)(b) that may be held by the QPP Compliance Unit or any Government Department or Instrumentality and take the information into account in assessing the offer.
- d) The Tenderer acknowledges that a failure to comply with the Principal's policies that apply to the work under the proposed contract or the Tenderer's obligations under the proposed contract may result in the imposition of a demerit or sanction under the Ethical Supplier Mandate, in addition to any other remedies available to the Principal under this Offer.
- e) The Tenderer shall include a completed Tender Schedule S10 – Ethical Supplier Threshold.

**iv. Indigenous Participation Framework** This clause applies only if the project meets the federal Indigenous participation framework. The Principal will provide the Contractor with the Indigenous Participation Target (%), Employment Component Target (hrs) and Supplier Component Target (\$)

The Australian Government has introduced an indigenous participation framework to increase opportunities for indigenous job-seekers and businesses participation in the delivery of land transport infrastructure projects.

The 'Indigenous Employment and Supplier-use Infrastructure Framework' (the framework) can be accessed via the following link:

[https://investment.infrastructure.gov.au/about/resources/national\\_partnership\\_agreement.aspx](https://investment.infrastructure.gov.au/about/resources/national_partnership_agreement.aspx)

Tenderer shall submit an Indigenous Participation Proposal with full details on:

- how the indigenous participation targets (employment component, supplier-use component) and Principal's requirements are to be achieved,
- which indigenous businesses (and/or supply side supports) are to be engaged,

For the purposes of verifying that a business meets the definition of an 'Indigenous Business', refer to Section 5 of the framework.

The Principal reserves the right to exclude the tender submission from further assessment if critical information is missing from the Indigenous Participation Proposal.

## **5 Cost adjustment**

There shall be no cost adjustments for changes in industrial award wages, allowances and working conditions.

## **6 Withdrawal and lapsing of Offer**

- (a) The Offeror may, by notice in writing to the Principal, withdraw its Offer at any time prior to the closing of Offers.
- (b) Offers shall remain valid for a period of three months after the closing time and date, or as otherwise indicated on the Invitation for Offer, and may be accepted by the Principal at any time before the expiry of that period.

## **7 Inspection of Site**

- (a) In placing its Offer, the Offeror shall be deemed to have inspected the Site, to have assessed the physical conditions of the Site and to have allowed for such conditions in its Offer.
- (b) The Offeror is invited by the Principal to examine the Information relevant to the Site which is listed in the Offer Documents (Information). The Offeror will be deemed to have examined all of the Information before it made its Offer. The Offeror shall consider the Information using its own knowledge.

## **8 Nature of Offer**

### **8.1 Schedule of Rates**

The Offer price shall be based on a Schedule of Rates and payment shall be made on the basis of:

- (a) a unit rate for those Works Items which have a stated unit of measurement and a stated quantity; or
- (b) a lump sum for those Works Items which do not have a stated unit of measurement and a stated quantity.

### **8.2 Whole of Works**

Unless stated otherwise in the Offer Documents, the Offer shall be for the whole of the Works specified in the Offer Documents and Notices to Offeror (if any).



## **9 Alternative Offers**

### **9.1 Content of an Alternative Offer**

- (a) The contents of the Alternative Offer shall be exactly as specified in the Offer Documents except that:
  - i. new Works Items may be included provided that each new Item has a Specification and/or plan sufficient to describe the method of performance of the Item and either:
    - A. an Item number, Item description, unit of measurement, quantity, unit rate and extended amount; or
    - B. an Item number, Item description and lump sum amount.
  - ii. Works Items listed on the Schedule of Rates contained in the Offer Documents may be omitted.
- (b) An Alternative Offer shall contain a Schedule of Rates in which are listed rates and lump sum amounts for all Works to be performed under the Offer.

### **9.2 Scope of the Works in the Alternative Offer**

The Alternative Offer shall be for the whole of the Works as they are defined in the Offer Documents.

### **9.3 Supporting data**

Alternative Offers shall be supported by sufficient data, set out in a clear format, to enable the Principal to give full consideration to the proposal contained in that Offer.

### **9.4 Submission of a Conforming Offer with an Alternative Offer**

- (a) If the Offeror submits an Alternative Offer, then the Offeror shall also submit a Conforming Offer.
- (b) If a Conforming Offer has not been submitted, then the Alternative Offer shall not be considered.

### **9.5 Consideration/Rejection of an Alternative Offer**

- (a) An Alternative Offer may be considered by the Principal provided that:
  - i. it complies with all of the requirements of this clause and any other relevant requirements of the Offer Documents and Notices to Offeror (if any)
  - ii. it provides a standard of performance, appearance and durability for the Works equivalent to or better than that provided by a Conforming Offer
  - iii. it does not expose the Principal to any liability in addition to that provided in a Conforming Offer.
- (b) The Principal reserves the sole right to determine if an Alternative Offer complies with all of the specified requirements.

## 10 Accepting an Offer

- (a) On receipt of the Offer, the Principal may negotiate with the Offeror. If the terms of the Offer are altered as a consequence of negotiation, the Offeror shall, if the Principal directs, resubmit its Offer in amended form so that it reflects the alterations agreed to.
- (b) The Principal may in its discretion refer an error or omission in an Offer to the Offeror for adjustment.
- (c) The Principal may accept an Offer that, on its view of all circumstances, appears to be the most advantageous, or may decline to accept any Offer.

## 11 Offer Program and cash flow

The Offeror shall include with its Offer:

- (a) a draft Construction Program in Gantt chart form or similar, indicating durations for the major phases of the Works under the Contract and significant project milestones
- (b) a preliminary cash flow diagram showing the anticipated value of Works completed at the end of each four-week period for the duration of the Contract, and
- (c) any other relevant information as requested by the Principal.

## 12 Reaching Conditional Agreement

Once the Offeror has prepared and presented its Offer, the negotiation process shall begin.

The aim of negotiating is to:

- agree on price
- agree on changes to the draft Offer Documents, and
- sign the Conditional Agreement.

Negotiation Items may include, but not limited to, the following:

- basis for rates for individual Items
- scope and alternative designs
- risk allocation
- Contract Sum
- Daywork and stand-down rates
- estimated number of wet days and the effect on individual rates
- effect of the quality management requirements on rates
- provisional Items
- effect of Contract duration on price
- supply of major materials required, and
- agreement on matters other than price.

