

**Conditions of Tendering – C7821.MIC.CO**

**Minor Infrastructure Contract – Construct Only**

**November 2020**

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**Contents**

**1 Nature of Contract ..... 1**

**2 Defined terms and interpretation ..... 1**

2.1 Defined terms..... 1

**3 Background, Prequalification and registration ..... 3**

3.1 General information ..... 3

3.2 Where Prequalification Requirements or project-specific registration requirements apply ..... 3

3.3 Access to Tender Documents..... 3

3.4 Appointment of Contractor ..... 4

**4 Contents of Tender ..... 4**

4.1 General ..... 4

4.2 Additional requirements ..... 4

4.3 Tender Schedules..... 5

**5 Tenderer to fully inform itself ..... 5**

5.1 General ..... 5

5.2 Matters affecting the Tender Price ..... 5

**6 Notice to Tenderers ..... 5**

**7 Enquiries..... 6**

**8 Lodgement of Tenders ..... 6**

8.1 Conditions applying to Tender lodgement ..... 6

8.2 Electronic Tender submission..... 6

8.3 Hard copy Tender submission ..... 7

**9 Tender Validity Period ..... 7**

**10 Alternative Tenders ..... 7**

**11 Not used..... 8**

**12 Opening of Tenders ..... 8**

12.1 Conditions applying to Tender opening ..... 8

12.2 Opening of electronic Tenders..... 8

12.3 Opening of hard copy Tenders ..... 8

12.4 Tender Prices..... 8

**13 Adjustment of a Tender ..... 8**

13.1 General ..... 8

13.2 Schedule of Rates Contract..... 9

13.3 Lump sum Contract ..... 9

**14 Unusually Low Bid..... 9**

**15 Post-Tender correspondence and negotiations ..... 10**

**16 Principal’s discretion ..... 10**

**17 Consideration and acceptance of Tenders ..... 11**

17.1	Consideration and assessment of Tenders .....	11
17.2	Mandatory criteria .....	12
17.3	Acceptance of a Tender.....	12
<b>18</b>	<b>Costs of Tender.....</b>	<b>12</b>
<b>19</b>	<b>Feedback to unsuccessful Tenderers .....</b>	<b>12</b>
<b>20</b>	<b>Information provided by Tenderers .....</b>	<b>12</b>
<b>21</b>	<b>Not used.....</b>	<b>12</b>
<b>22</b>	<b>Information .....</b>	<b>12</b>
22.1	Registered Suppliers .....	12
<b>23</b>	<b>Public Utility Plant .....</b>	<b>13</b>
<b>24</b>	<b>Privacy and confidential information.....</b>	<b>13</b>
24.1	Use and disclosure of Personal Information by the Department .....	13
24.2	Tenderer’s acknowledgement.....	13
24.3	Confidentiality .....	14
24.4	Information to be published .....	14
24.5	Identity of prospective Tenderers .....	14
<b>25</b>	<b>Not used.....</b>	<b>15</b>
<b>26</b>	<b>Not used.....</b>	<b>15</b>
<b>27</b>	<b>The Building Code .....</b>	<b>15</b>
27.1	General .....	15
27.2	Conditions for participation .....	15
27.3	Tenderer’s acknowledgement and agreement .....	15
27.4	Not used.....	15
27.5	Projects to which the Building Code applies.....	15
27.6	Declaration of Compliance.....	15
<b>28</b>	<b>Queensland Code .....</b>	<b>15</b>
<b>29</b>	<b>Mandatory Tender Schedules required for all Tenders .....</b>	<b>15</b>
<b>30</b>	<b>Not used.....</b>	<b>16</b>
<b>31</b>	<b>Project Specific Tender Schedules.....</b>	<b>16</b>
<b>99</b>	<b>Additional clauses .....</b>	<b>16</b>

## 1 Nature of Contract

The proposed Contract is either a Schedule of Rates, lump sum, or part Schedule of Rates and part lump sum, as stated in Item 8A of Annexure A to the General Conditions of Contract (and as described in Annexure B to the General Conditions of Contract) for the performance of work in accordance with the Tender Documents.

## 2 Defined terms and interpretation

### 2.1 Defined terms

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

Term	Definition
ABCC	Australian Building and Construction Commission
Alternative Tender	has the meaning given in Clause 10 of these Conditions of Tendering
Authorisation	means that the person signing the Tender Documents is certifying that they are duly authorised to submit, on behalf of the Tenderer, the Tender and information requested, and that the information as submitted is correct
Building Code	means the <i>Code for the Tendering and Performance of Building Work 2016</i> (Cth)
Complying Tender	a Tender received from an Eligible Tenderer which satisfies all requirements of the Conditions of Tendering
Conforming Tender	a Tender received from an Eligible Tenderer which conforms in all respects to the requirements of the Tender Documents
Contract	the proposed Contract in respect of the Works the subject of the Tender Documents
Date of Lodgement of Tender	means, for a Tender, the date on which the Tender is lodged by the Tenderer with the Principal
Department	the Queensland Government Department of Transport and Main Roads
Electronic Tendering System	means the electronic tendering system (if any) specified in Item 1A of the Annexure to these Conditions of Tendering
Item	means an item in the Annexure to these Conditions of Tendering
Location for Lodgement	means if method of lodgement of Tender is specified in Item 4A of the Annexure to these Conditions of Tendering as hard copy submission, the location for lodgement of Tenders specified in Item 4A

Term	Definition
Median Tender Price	means the middle value of the Tender Prices (taking into account any necessary adjustments made pursuant to Clause 13 of these Conditions of Tendering) of all Conforming Tenders when the Conforming Tenders are listed in ascending order of Tender Price. If the number of Conforming Tenders is even, then the median is the mean of the two middle values.
Planned Cash Flow Schedule	means the expected amounts of claims for payment for each month up to the Date for Practical Completion set out by the Tenderer in Tender Schedule M3
Prequalified	means a person who meets the Department's prequalification requirements
Schedule Summary	means the Tender Schedule M Schedule Summary
Tender	means the documents included in the Tender Documents, and any attachments required by these Conditions of Tendering, duly completed and executed by, or on behalf of, the Tenderer and lodged with the Principal in accordance with these Conditions of Tendering
Tender Documents	<p>means the documents issued to the Tenderer and includes the following documents:</p> <ul style="list-style-type: none"> <li>a) Information for Tenderers (C7820.MIC)</li> <li>b) Conditions of Tendering (C7821.MIC) and the Annexure to the Conditions of Tendering (C7822.MIC)</li> <li>c) Tender Form (C7801)</li> <li>d) Tender Schedules (C7810 suite)</li> <li>e) General Conditions of Contract (C7830.MIC), including: <ul style="list-style-type: none"> <li>i. Annexure A (Contract Details)</li> <li>ii. Annexure B (Commercial Framework)</li> </ul> </li> <li>f) any additional Contract requirements (Clause Bank C7836.MIC) if applicable.</li> <li>g) the standard documents specifically incorporated by reference in the Standard Documents List (C7825)</li> <li>h) the Annexures to the Standard Specifications</li> <li>i) the Principal Supplied Material List (C7827) as applicable</li> <li>j) any Project Specific Specifications if applicable</li> <li>k) the Unconditional Bank Guarantee (C7841) or Unconditional Insurance Bond (C7844) for Retention Security</li> <li>l) the Drawings</li> <li>m) any Notices to Tenderers, and</li> <li>n) any other documents incorporated by reference.</li> </ul>
Tender Form	means the Tender Form provided by the Principal in the Tender Documents to be completed and executed by the Tenderer and returned to the Principal as part of the Tender
Tender Price	means the amount tendered by the Tenderer in its Conforming Tender for the whole of the work specified in the Tender Documents as inserted by the Tenderer on the Tender Form

Term	Definition
Tender Schedules	Tender Documents to be completed by the Tenderer and returned to the Principal as part of the Tender
Tender Validity Period	means the period starting on the day after the Time for Lodgement and ending after the time specified in Item 5A of the Annexure to these Conditions of Tendering
Tenderer	means the person or persons who is given access to the Tender Documents by the Principal for the purposes of lodging a Tender
Time for Lodgement	means the time for lodgement of Tenders specified in Item 4B of the Annexure to these Conditions of Tendering
TIPDS	means the department's <i>Transport Infrastructure Project Delivery System</i> manual
Unusually Low Bid	is a Tender with a Tender Price (taking into account any necessary adjustments made pursuant to Clause 13 of these Conditions of Tendering), with an amount that is below the Median Tender Price by more than the percentage specified in Item 7B of the Annexure to these Conditions of Tendering

### 3 Background, Prequalification and registration

#### 3.1 General information

The Principal is undertaking this Tender process to identify suitably qualified and experienced organisations to perform the work under the Contract.

#### 3.2 Where Prequalification Requirements or project-specific registration requirements apply

If Prequalification Requirements or project-specific registration requirements are specified in Item 1B of the Annexure to these Conditions of Tendering, the Principal will only consider Tenders received from Prequalified Tenderers or pre-registered organisations as applicable. In addition, the Tender advertisement posted in the Queensland Government tendering website will contain the minimum Prequalification Level(s) or registration required for the Contract. Tenderers shall have the required Prequalification Level(s) at the close of the Tender period.

#### 3.3 Access to Tender Documents

If there is an Electronic Tendering System specified in Item 1A of the Annexure to these Conditions of Tendering, then:

- a) the Tenderer shall access the Tender Documents by registering on the Electronic Tendering System, and
- b) the Tenderer shall contact the Principal for any queries or issues related to accessing the Electronic Tendering System.

### **3.4 Appointment of Contractor**

- a) A Tender constitutes an Offer, which is capable of acceptance by the Principal during the Tender Validity Period, to perform the work under the Contract in accordance with the Contract.
- b) The Tenderer that is ultimately successful in being appointed to perform the Works will, subject to the rights of the Principal provided in these Conditions of Tendering and at law, be required to enter into the Contract with the Principal for the provision of the work under the Contract and will be required to carry out and complete the work under the Contract in accordance with the Contract.

## **4 Contents of Tender**

### **4.1 General**

- a) A Tender shall:
  - i. be for the whole of the work described in the Tender Documents
  - ii. be submitted on the Tender Form provided by the Principal, which Form shall be duly completed and executed by the Tenderer
  - iii. include the number of copies and be in the format specified in Item 2A of the Annexure to these Conditions of Tendering
  - iv. be accompanied by the Tender Schedules required by the Conditions of Tendering duly completed by the Tenderer
  - v. be free of alterations or erasures, and all information (including unit rates or amounts) provided shall be clearly stated and capable of being legibly photocopied
  - vi. be signed by a person or persons having full Authority to enter into the proposed Contract on behalf of the Tenderer, and:
    - i. the name and the position of the person signing shall be printed clearly in the locations indicated adjacent to the signature
    - ii. if requested by the Principal, evidence of the Authority of the person or persons signing on behalf of the Tenderer shall be furnished
    - iii. the signature shall be witnessed and the witness shall insert his/her name and sign the Tender Form in the locations provided, and
  - vii. be in English and all prices and rates shall be in Australian dollars and, unless otherwise specified, all measurements shall be in Australian legal units of measurement.
- b) The Tenderer shall not alter or add to the Tender Documents, except as required by the Conditions of Tendering.
- c) All of the Tender Documents shall be deemed to form part of the Tender.

### **4.2 Additional requirements**

If the Tenderer:

- i. is an individual, a local government or a departmental business unit, the Tender shall include the full name and the address of the Tenderer



- ii. is a corporation, the Tender shall include the corporation's:
  - i. full name
  - ii. registered office address, and
  - iii. ACN/ABN
- iii. is a corporation or firm with a registered office located outside of Australia, the Tender shall include the foreign corporation's:
  - i. full name
  - ii. registered office address
  - iii. ARBN, and
  - iv. representative in Australia (if any) and the representative's address
- iv. is a firm, the Tender shall include the full name and address of each member of the firm
- v. trades under a business name which differs from the Tenderer's name, the Tender shall include the business name.

#### **4.3 Tender Schedules**

The Tender Schedules shall strictly comply with the specific requirements set out in the Conditions of Tendering.

### **5 Tenderer to fully inform itself**

#### **5.1 General**

The Tenderer shall (without limitation) examine and carefully check and acquire actual knowledge of the contents of all of the Tender Documents.

#### **5.2 Matters affecting the Tender Price**

- a) The Tender Price is to include, and shall be deemed to include, all costs:
  - i. of complying with the Tender Documents, and
  - ii. associated with carrying out all matters and doing all things necessary for the due and proper performance and completion of the work under the Contract.
- b) Without limiting Clause 5.2(a) of these Conditions of Tendering, the Tender Price shall include, and is deemed to include:
  - i. licence fees, royalty payments and all charges and taxes, and
  - ii. customs duty and any charges applicable to imported items, materials, plant or equipment required for the work under the Contract.

### **6 Notice to Tenderers**

- a) The Principal may issue a Notice to Tenderers to clarify, revise, amend or modify any aspect of the Tender Documents before the Time for Lodgement.

- b) Except where a Notice to Tenderers relates to a matter relevant to only one Tenderer pursuant to Clauses 14 or 15 of these Conditions of Tendering, the Principal shall issue a Notice to Tenderers to all Tenderers concurrently.
- c) The Tenderer may not rely on any explanation or interpretation of the Tender Documents provided by the Principal other than provided in a Notice to Tenderers.

## **7 Enquiries**

At any time before the Time for Lodgement, the Tenderer may, by writing to the person named and, in the matter specified in Item 3A of the Annexure to these Conditions of Tendering, request further information from the Principal.

## **8 Lodgement of Tenders**

### **8.1 Conditions applying to Tender lodgement**

- a) The Tender shall be lodged either electronically or at the Location for Lodgement, as specified in Item 4A of the Annexure to these Conditions of Tendering, by the Time for Lodgement as specified in Item 4B of the Annexure to these Conditions of Tendering.
- b) By lodging a Tender, the Tenderer is deemed to have accepted these Conditions of Tendering.
- c) The Tenderer may withdraw and re-submit its Tender any time up to the Time for Lodgement.
- d) The Tenderer may not alter its Tender after the Date of Lodgement of Tender.

### **8.2 Electronic Tender submission**

- a) This Clause 8.2 applies if there is an Electronic Tendering System, as specified in Item 1A of the Annexure to these Conditions of Tendering, and Item 4A of the Annexure to these Conditions of Tendering specifies an electronic Tender lodgement method.
- b) The Tender shall be deemed to have been submitted using the Electronic Tendering System at the date and time stated on the electronic receipt issued to the Tenderer.
- c) The Tender, or part thereof, that has not been delivered to the designated Electronic Tendering System before the Time for Lodgement may be rejected at the sole discretion of the Principal.
- d) If:
  - i. the Tenderer is unable to submit the Tender using the Electronic Tendering System due to a technical failure of either the Electronic Tendering System or the Tenderer's information and communications technology system, or
  - ii. the Electronic Tendering System fails to issue an electronic receipt to the Tenderer acknowledging receipt of the Tender,then the Principal may, on request by the Tenderer, allow the Tenderer to submit the Tender either:
  - iii. in hard copy format in accordance with the requirements of Clause 8.3 of these Conditions of Tender and delivered to a Tender box location to be advised by the Principal, or
  - iv. by email to the email address advised by the Principal.

### **8.3 Hard copy Tender submission**

- a) This Clause 8.3 applies if Item 4A of the Annexure to these Conditions of Tendering specifies a hard copy Tender lodgement method.
- b) The Tender shall:
  - i) be completely enclosed, sealed and securely packaged and endorsed on the outside: 'TENDER FOR ..... (Contract Number) ....., and
  - ii) be addressed to the Principal at the address stated on the Tender Form.
- c) The Principal will not consider a Tender received at the Location for Lodgement after the Time for Lodgement unless the Principal is satisfied that:
  - i. the Tender was mailed (or despatched by other recognised carrier providing a direct delivery service to the Location for Lodgement) at a time which, under normal delivery circumstances, would have ensured its receipt at the Location for Lodgement by the Time for Lodgement, and
  - ii. that delivery was delayed by circumstances beyond the control of the Tenderer and the carrier concerned.

## **9 Tender Validity Period**

- a) In consideration of the Principal receiving and considering the Tender, the Tenderer agrees that:
  - i. its Tender shall remain valid and open for acceptance by the Principal during the Tender Validity Period, and
  - ii. the Tenderer may withdraw its Tender after the expiration of, but not during, the Tender Validity Period.

## **10 Alternative Tenders**

- a) If the Tenderer has lodged a Conforming Tender, then it may also lodge one or more Alternative Tenders (each an Alternative Tender) in accordance with these Conditions of Tendering.
- b) Any Alternative Tender provided by the Tenderer shall:
  - i. be for the whole of the work described in the Tender Documents
  - ii. provide a lump sum price for the work under the Contract
  - iii. include any additional Tender Schedules that may be required for Alternative Tenders
  - iv. list the departures from, and/or amendments to, the contents of the Tenderer's Conforming Tender. For each departure/amendment, the Tenderer shall:
    - i. provide full details of the changes to the Conforming Tender
    - ii. state the lump sum total (including GST) for the alternative proposal, including a list of all the items in the Schedule of Rates which are to be replaced by the lump sum, and state the resulting alteration to the Tender Price
    - iii. provide a Schedule of Prices, including quantities and rates, for the lump sum, and

- iv. state any consequent changes to the Conforming Tender (for example, to the Tender Schedules) and include new information where necessary.

## **11 Not used**

## **12 Opening of Tenders**

### **12.1 Conditions applying to Tender opening**

The Principal will open the Tenders as soon as possible after the Time for Lodgement.

### **12.2 Opening of electronic Tenders**

- a) This Clause 12.2 applies if Item 4A of the Annexure to these Conditions of Tendering specifies an electronic submission through the Electronic Tendering System.
- b) A Tender submitted electronically shall be deemed to have been opened by the Principal once the Principal has successfully downloaded such electronic Tender from the Electronic Tendering System.

### **12.3 Opening of hard copy Tenders**

- a) This Clause 12.3 applies if Tenders are submitted in hard copy pursuant to Item 4A of the Annexure to these Conditions of Tendering.
- b) The Principal may, at its sole discretion, conduct a public opening of Tenders submitted in hard copy format, in which case:
  - i. the Tenderer and/or its agents and other interested persons may attend the opening
  - ii. at the opening, the Principal will announce for each Tender:
    - i. the Tenderer's name, and
    - ii. whether the Tender appears compliant with all the requirements of the Conditions of Tendering.
- c) In the absence of a public opening of Tenders, the Principal will subsequently make the summary results of the Tenders available (including any Alternative Tenders) to Tenderers in accordance with Clause 12.4 of these Conditions of Tendering.

### **12.4 Tender Prices**

- a) The Principal shall, within two Business Days after the Tender closing, announce the tendered amount (including any Alternative Tenders) as shown on the Tender Form of each Tender received from the Tenderers through:
  - i. a schedule issued to Tenderers via the Electronic Tendering System, or
  - ii. via correspondence or other means of communications in the absence of an Electronic Tendering System.

After award, the winning Tenderer and Tender Price shall be made available.

## **13 Adjustment of a Tender**

### **13.1 General**

This Clause 13 applies after a Tender is lodged, but before the Date of Acceptance of Tender.

### **13.2 Schedule of Rates Contract**

- a) If the Principal identifies an error or omission by the Tenderer in the completion, extension and/or summation of the unit rates and amounts in the Schedule of Rates, the Principal may adjust the Tender in accordance with the provisions of this Clause 13.2.
- b) The Principal may make the necessary corrections and amend the Tender Price accordingly, including any necessary adjustment in the amount of GST if:
  - i. an Item in the Schedule of Rates includes a quantity which differs from that shown in the Tender Documents (or as may be amended by a Notice to Tenderers)
  - ii. an Item in the Schedule of Rates includes an error in the amount shown in the 'amount' column (the product of the quantity and the unit rate)
  - iii. an Item in the Schedule of Rates includes an error in the summation of the amounts in the 'amount' column
  - iv. the Schedule of Rates includes an error in the calculation of the amount of GST, or
  - v. the Schedule of Rates includes an error in the total of the summation of the amounts shown in the 'amount' column and the amount of GST.
- c) If the Principal identifies that an Item in the Schedule of Rates omits:
  - i. the unit rate, but includes an amount in the 'amount' column, the Principal may calculate the unit rate by dividing the amount in the 'amount' column by the quantity and insert the calculated unit rate in the Schedule of Rates
  - ii. both the unit rate and the amount in the 'amount' column (for an Item with both a unit of measurement and a quantity) or the amount in the 'amount' column (for an Item where the unit of measurement column contains 'lump sum'), the Principal may make adjustments only if the omitted unit rate, or amount as the case may be, can be objectively and mathematically determined.
- d) Where the omitted unit rate or amount (as the case may be) cannot be objectively and mathematically determined, the Principal may treat the Tender as if it is a non-Conforming Tender.

### **13.3 Lump sum Contract**

If there is a discrepancy between the sum of the amounts in the 'amount' column of the Schedule of Prices (including the amount of GST) and the Tender Price:

- a) the Tender Price will prevail, and
- b) the Principal and the Tenderer may agree that any, or all, of the amounts inserted in the 'amount' column of the Schedule of Prices and the amount of GST shall be amended accordingly. The failure of the Principal and the Tenderer to agree the amendments required to address the discrepancy between the Tender Price in the Schedule of Prices shall result in the Tender being declared as a non-Conforming Tender.

## **14 Unusually Low Bid**

- a) This Clause 14 applies if the Unusually Low Bid provisions are specified in Item 7A of the Annexure to these Conditions of Tendering to apply.

- b) If the Principal receives an Unusually Low Bid which does not contain any fatal error, then:
  - i. it will notify the Tenderer in writing that it has made an Unusually Low Bid, and
  - ii. allow the Tenderer five Business Days to make submissions to the Principal as to why the Unusually Low Bid should not be excluded from consideration.
- c) The Tenderer's submissions in Clause 14(b)(ii) shall only address, and the Principal shall only take into account, one or combination of the following factors:
  - i. materials cost advantage
  - ii. process cost advantage
  - iii. innovation advantage, and
  - iv. genuine commercial advantage.
- d) The Principal may exclude an Unusually Low Bid from further consideration if:
  - i. the Tenderer does not provide submissions in accordance with Clause 14(b)(ii) of these Conditions of Tendering, or
  - ii. the Tenderer's submissions do not substantiate an advantage that explains why the Tender is an Unusually Low Bid, or
  - iii. the Principal, having made its own enquiries, is not satisfied for any reason that the Tender represents best value for money.
- e) The Principal may request a meeting with the Tenderer to discuss any aspect of the Unusually Low Bid.

## **15 Post-Tender correspondence and negotiations**

- a) This Clause 15 applies after the Date of Lodgement of Tender, but before the Date of Acceptance of Tender and notwithstanding any other requirements of the Tender Documents.
- b) The Principal may require the Tenderer to provide additional information concerning its Tender by a date and time specified by the Principal.
- c) If the Tenderer fails to provide the further information in accordance with Clause 15(b) of these Conditions of Tendering, then the Principal may reject the Tender.

## **16 Principal's discretion**

Without limiting any other right of the Principal, the Principal may, in its absolute discretion, do any one or more of the following:

- a) withdraw any request for Tender
- b) suspend the Tender process
- c) extend the Time for Lodgement
- d) change the Location for Lodgement
- e) decline to consider or evaluate any or all Tenders
- f) decline to accept any Tender

- g) at any time, alter any process or procedure regarding the consideration or the evaluation of any Tender or Tenders
- h) negotiate on any aspect of a Tender before identifying whether the Principal accepts or rejects any Tender
- i) invite best and final Offers from any one or more Tenderers
- j) invite further or other Tenderers to lodge a Tender for the performance of the work under the Contract
- k) not proceed with the work under the Contract
- l) proceed with a Contract on the basis of a scope of work of a different nature or extent or on terms different from those set out in the Tender Documents, and / or
- m) negotiate with and enter into a Contract with any other party for the performance of the work under the Contract and/or any other work.

## **17 Consideration and acceptance of Tenders**

### **17.1 Consideration and assessment of Tenders**

- a) The Principal may reject a Tender that is not a Conforming Tender or a Complying Tender.
- b) In relation to any Alternative Tender, the Principal reserves the right to:
  - i. consider any Alternative Tender
  - ii. accept all, any or none of the departures and amendments proposed in the Alternative Tender (and will indicate such acceptance in the Letter of Acceptance and the Schedule of Deviations), and/or
  - iii. accept a lump sum for an Alternative Tender which may be for the whole or part of the work under the Contract.
- c) The Principal is not required to accept the Tender (including any Alternative Tender) with the lowest Tender Price.
- d) The Principal may use predetermined structured assessment techniques for the evaluation of Tenders which may take into account, without limitation:
  - i. the quality of the Works
  - ii. long-term costs to the Principal
  - iii. the rates specified in the Tender, and
  - iv. the Tender Price.
- e) The Principal may require the Tenderer to provide evidence of its current capacity to complete the work under the Contract in a timely manner, on or before the Date for Practical Completion, for the Tender Price.

### **17.2 Mandatory criteria**

- a) Where Item 8A of the Annexure to these Conditions of Tendering specifies that a mandatory criteria assessment will be carried out as part of the Tender assessment process:
  - i. mandatory criteria as identified in Item 8B of the Annexure to these Conditions of Tendering will be considered, and
  - ii. the tenderers shall satisfy all mandatory criteria in Item 8B for their tenders to be considered further.

### **17.3 Acceptance of a Tender**

The Principal may accept a Tender by providing the Tenderer with a Letter of Acceptance:

- a) by handing it to the Tenderer
- b) by posting it or leaving it at the Tenderer's address stated on its Tender Form, or
- c) if there is an Electronic Tendering System, by issuing it to the Tenderer through that system.

## **18 Costs of Tender**

The Principal is not liable to the Tenderer for any costs, losses or expenses incurred by the Tenderer in connection with:

- a) preparing a Tender or Alternative Tender, or
- b) after the Date of Lodgement of Tender, any work undertaken by the Tenderer, including in connection with any discussions, negotiations, enquiries or requests for details or information made by or on behalf of the Principal.

## **19 Feedback to unsuccessful Tenderers**

An unsuccessful Tenderer may request an individual meeting with the Principal to obtain further feedback in respect of its unsuccessful Tender.

## **20 Information provided by Tenderers**

- a) Notwithstanding any statements to the contrary in the Tender Documents or the Tenderer's submissions either before or after the Time for Lodgement, the information provided by the Tenderer to be used in the assessment process shall in no way relieve the Contractor from stated or implied responsibilities to comply with the Contract.
- b) It is the intention, however, that statements made by the Tenderer in submissions supporting non price selection criteria will be used as benchmarks by which to evaluate performance of the Contractor during execution of the Contract.

## **21 Not used**

## **22 Information**

### **22.1 Registered Suppliers**

Suppliers of certain high risk and specialised products and services shall be registered with the Department as a condition of undertaking work under the Contract. Details of the registration requirements are set out in the relevant Specifications.



## **23 Public Utility Plant**

- a) This Clause 23 applies if Item 10A of the Annexure to these Conditions of Tendering specifies Public Utility Plant that will be affected by the work under the Contract.
- b) The Principal has made arrangements with the responsible Authority for relocation of the affected utilities. The Tenderer may inspect copies of any relevant correspondence and/or agreements with responsible authorities at the location stated in Item 10B of the Annexure to these Conditions of Tendering by making arrangements with the person nominated in that Item.
- c) The Principal may issue a Notice to Tenderers with updated information regarding the status of affected utilities.

## **24 Privacy and confidential information**

### **24.1 Use and disclosure of Personal Information by the Department**

- a) The Principal is required to comply with the *Information Privacy Act 2009* (Qld).
- b) Any Personal Information received by the Principal from the Tenderer:
  - i. may be used by the Principal, without limitation, for the purpose of assessing Tenders and administering any subsequent Contract
  - ii. may be disclosed to a third party for the purpose of conducting financial checks, and
  - iii. will not be disclosed to any other third party without consent of the Tenderer, except where authorised or required by the legislative requirements.

### **24.2 Tenderer's acknowledgement**

- a) The Tenderer acknowledges that the *Right to Information Act 2009* (Qld) (RTI Act):
  - i. provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies, and
  - ii. requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to the public interest.
- b) The Tenderer acknowledges that any information provided to the Principal by the Tenderer (including information contained in the Tender and in any other submissions either before or after the Date of Lodgement of Tender) is potentially subject to disclosure to third parties.
- c) The Tenderer may indicate when lodging a Tender if it has substantial concerns regarding the disclosure of any information mentioned in Clause 24.2(a) of these Conditions of Tendering, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature. However, the Principal provides no warranty that any information provided by the Tenderer will be protected from disclosure under the RTI Act.

### **24.3 Confidentiality**

- a) Information supplied by the Principal (including the Tender Documents or any other information provided by the Principal pursuant to these Conditions of Tendering) shall be regarded as confidential and shall not be disclosed by the Tenderer to any person or use for any purpose other than complying with these Conditions of Tendering except to the extent:
  - i. the information is already generally known to the public
  - ii. the Principal has given its prior written consent (which consent shall not be unreasonably withheld)
  - iii. disclosure is required because of any legislative requirement,
  - iv. information is disclosed to and used by a professional advisor or an insurer or financier, or and in any case only for the purpose of allowing the party to comply with these Conditions of Tendering.
- b) The Contractor shall ensure that the Tender Documents are used, copied and supplied only for the purpose of the work under the Contract.
- c) Upon written request by the Principal:
  - i. the Tenderer's right to use the information supplied by the Principal ceases, and
  - ii. the Tenderer shall, immediately at the Principal's direction:
    - i. return the information supplied to the Principal
    - ii. destroy the information and certify this in writing to the Principal, or
    - iii. destroy and permit a representative of the Principal to witness the destruction of all of the Principal's information in the Tenderer's possession or control, except for information that the Tenderer is required to retain by law or for reasons of good corporate governance consistent with the Tenderer's normal practices.

### **24.4 Information to be published**

- a) Despite any provision of the Tender Document or a Tender, the Principal may publish, online or by any other means, the following details:
  - i. name and address of the Principal under the Contract
  - ii. a description of the Works
  - iii. the Contract Sum and the Date of Acceptance of Tender
  - iv. the name and address of the Tenderer who received a Letter of Acceptance, and
  - v. the procurement method used.
- b) Any proposed variation by the Tenderer to this Clause 24 which takes away or reduces the entitlements that would otherwise be provided to the Principal under this Clause 24.4 will be rejected.

### **24.5 Identity of prospective Tenderers**

Upon receipt of a written request by an interested party, the Principal may, in its absolute discretion, disclose the identity of the Tenderer.

**25 Not used**

**26 Not used**

## **27 The Building Code**

### **27.1 General**

The Tenderer's attention is drawn to the *Code for the Tendering and Performance of Building Work 2016* (the *Building Code*), available at <https://www.abcc.gov.au/building-code>.

The Principal shall provide notification to the Australian Building and Construction Commission (ABCC) by using the tender notification form as soon as practicable after issuing a request for expressions of interest or requests for tender (howsoever described) for the Works.

The Principal shall notify the ABCC to whom the Contract was awarded following the issuance of letter of award.

### **27.2 Conditions for participation**

If specified in Item 13E of the Annexure to these Conditions of Tendering, it is a condition that the Tenderer comply with the Building Code.

### **27.3 Tenderer's acknowledgement and agreement**

By submitting an expression of interest or Tender to undertake the Works (or Services), the Tenderer is:

- a) deemed to have read, and
- b) agrees to and will become subject to the Building Code.

### **27.4 Not used**

### **27.5 Projects to which the Building Code applies**

The Tenderer should be aware that the Building Code applies to the project which is the subject of these Tender Documents.

### **27.6 Declaration of Compliance**

The Tenderer is required to comply with the Building Code. As part of its Tender response, the Tenderer shall submit a signed Declaration of Compliance in accordance with the Declaration of Compliance attached to Tender Schedule S5.

## **28 Queensland Code**

The *Queensland Code of Practice for the Building and Construction Industry* (Queensland Code) will apply to this project.

The Queensland Code is available from:

<https://www.oir.qld.gov.au/industrial-relations/building-and-construction-code-practice-2000>.

## **29 Mandatory Tender Schedules required for all Tenders**

The Tenderer shall complete, in every detail, all Tender Schedules required for this Contract.

**30 Not used**

**31 Project Specific Tender Schedules**

The Tenderer shall complete, in every detail, all Tender Schedules required for this Contract.

**99 Additional clauses**

Refer to the Conditions of Tendering Annexure Item 14A for the applicable additional clauses.

