

C7542 – General Conditions of Offer

Consultants for Engineering Projects

April 2026

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1 Definitions

In these General Conditions of Offer and in the Offer Documents (as defined), all words and expressions shall have the meanings assigned to them in the Form C7545 *General Conditions of Contract*, and the following words and expressions shall have the meanings ascribed to them here, unless the context indicates a contrary intention:

- a) **'Alternative Offer'** means an Offer titled 'Alternative offer' containing an alternative proposal which satisfies all requirements of these General Conditions of Offer.
- b) **'Associate'** means a related body corporate of the Offeror and any officer, employee, agent, Contractor, consultant or advisor of the Offeror.
- c) **'Closing Time'** means the Closing Time / Date for Offer stated in Item 1.4 of the Invitation for Offer.
- d) **'Conflict of Interest'** includes engaging in any activity, or having any interest, which conflicts or may be perceived to conflict with the ability of the Offeror to submit an Offer in good faith and objectively.
- e) **'Conforming Offer'** means an Offer which conforms in all material respects with the requirements of these General Conditions of Offer and the Offer Documents.
- f) **'Consequential Loss'** means: (i) indirect loss; (ii) loss of profits; (iii) loss of revenue; (iv) loss of savings; (v) loss of opportunity; (vi) loss of bargain; (vii) loss of use; (viii) damage to credit rating; (ix) loss of or damage to reputation, future reputation or publicity; (x) loss in connection with claims made by third parties; (xi) remote, abnormal or unforeseeable loss; and (xii) any consequential loss or damage that is similar to the losses in this definition, whether or not such loss or damage was foreseeable or within the contemplation of the Principal and/or the Offeror at any time.
- g) **'Data Breach'** means any actual, threatened or suspected cyber or information security incident affecting the security, integrity or availability of any information or data held by or on behalf of the Offeror, and includes:
 - i. any unauthorised access, disclosure, modification, use, copying or loss of any such information or data (whether or not confidential in nature), and
 - ii. any Eligible Data Breach in respect of the Personal Information.
- h) **'Eligible Data Breach'** has the meaning given in the *Information Privacy Act 2009* (Qld).
- i) **'Evaluation Criteria'** means the applicable evaluation criteria specified in Item 2 of the Invitation for Offer.
- j) **'General Conditions of Offer'** means this document.

- k) **‘Government Department or Instrumentality’** means the Procurement Assurance Branch within Queensland Government Procurement Division of the Department of Housing and Public Works, and any governmental regulator, including but not limited to Work Health Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission, and the Australian Taxation Office.
- l) **‘Information Privacy Act’** means the *Information Privacy Act 2009* (Qld).
- m) **‘Intellectual Property Rights’** includes all copyright, designs, patents or other proprietary rights, or any rights to registration of such rights existing in Australia, or elsewhere or as protected by legislation from time to time whether created before, on or after the commencement of these General Conditions of Offer and the Offer Documents, but excludes Moral Rights, as defined in Clause 19.
- n) **‘Invitation for Offer’** means the Form C7585 *Invitation for Offer* issued by or on behalf of the Principal for the procurement of the Consultant Services.
- o) **‘Limited Invitation’** means an Invitation for Offer extended by the Principal to selected consultants, generally to a minimum of 3 persons.
- p) **‘Nonconforming Offer’** has the meaning given in Clause 9.1.1.
- q) **‘Offer’** means a response from a prospective supplier to an Open Invitation, Limited Invitation or Sole Invitation to supply the Consultant Services.
- r) **‘Offer Documents’** includes those documents as set out in Item 1.6 of the Invitation for Offer.
- s) **‘Offeror’** means any person who submits an Offer to the Principal pursuant to the Invitation for Offer.
- t) **‘Open Invitation’** means an Invitation for Offer extended by the Principal to the public whether by advertising in the newspaper or other appropriate publication.
- u) **‘Person’** includes bodies corporate and unincorporated.
- v) **‘Personal Information’** has the meaning given in the *Information Privacy Act 2009* (Qld).
- w) **‘Price Schedule’** means the price schedule as set out in Item 2.1 of the Form C7587 *Offer for Consultant Service – Price Component* which provides the rate or respective rates of payment for the performance of Consultant Services. The rates of payment should not include an amount of GST in respect of the work.
- x) **‘Procurement Assurance Model’** means the Procurement Assurance Model described in Part 3 of the *Queensland Procurement Policy*.

- y) **'Queensland Government Supplier Code of Conduct'** means Queensland Government policy titled *Queensland Government Supplier Code of Conduct*, or any policy that replaces that policy.
- z) **'Queensland Procurement Policy'** means the *Queensland Procurement Policy* as amended or replaced by the Queensland Government from time to time.
- aa) **'RTI Act'** means the *Right to Information Act 2009* (Qld).
- bb) **'Sole Invitation'** means an Invitation for Offer extended by the Principal directly to a single supplier.

2 Interpretation

- a) References to clause numbers are references to numbered clauses of this Form C7542 *General Conditions of Offer* unless otherwise specified.
- b) The singular includes the plural and vice versa and words of any gender include the other genders.
- c) Where an Offeror consists of 2 or more persons, this Form C7542 *General Conditions of Offer* shall bind them jointly and severally.

3 Nature of offer

These General Conditions of Offer and the Offer Documents set out the requirements for Offers and how the Principal intends to carry out the Offer process.

3.1 No claims by unsuccessful Offerors

No Offeror will have any claim against the Principal on any ground whatsoever (whether in Contract, tort or otherwise) arising out of or in any way connected with the manner in which Offers are invited or considered by the Principal, any discussion or clarification by the Principal with any Offeror concerning any Offer or any failure by the Principal to consider or accept any Offer.

3.2 Accepts conditions, no reliance

By lodging an Offer, the Offeror:

- a) accepts these General Conditions of Offer without qualification, and
- b) acknowledges that the Offeror has not relied upon any promise, representation, statement, document, information, warranty or undertaking made, provided or given by the Principal or by any person on behalf of the Principal (whether written, oral or by conduct) which is not expressly set out or referred to in the Offer Documents.

3.3 Prequalification requirements

- a) Where Item 1.5.1 of the Invitation for Offer specifies that the Consultant Services are to be provided by a Prequalified Consultant, the Offeror must be prequalified under the Principal's Prequalification System for Consultants for Engineering Projects at the levels for the nominated categories set out in Item 1.5.1.1 of the Invitation for Offer.
- b) The Offeror must immediately notify the person or person holding the position identified in Item 3.1 of the Invitation for Offer if the Offeror does not meet the prequalification requirements, including deficiencies in the Offeror's quality assurance system certification or controlled self-assessment documentation (for Cost Estimating Levels 1 and 2, Cost Management Levels 1 and 2, Economic Studies all levels, Financial / Commercial all levels, Intelligent Transport Systems Levels 1 and 2, Transport Planning Levels 1 and 2), professional engineer registration, status of professional indemnity and/or public liability insurances.

3.4 Right to information and disclosure

- a) The RTI Act provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies.
- b) The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or, on balance, disclosure is contrary to the public interest.
- c) Information provided by the Offeror is potentially subject to disclosure to third parties pursuant to the RTI Act.
- d) If disclosure under the RTI Act, or general disclosure of information provided by the Offeror, would be of substantial concern to the Offeror, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, including Personal Information, this should be indicated by the Offeror in its Offer. The Principal cannot guarantee that any information provided by the Offeror will be protected from disclosure under the RTI Act.
- e) The Offeror must familiarise itself with the relevant provisions of the RTI Act dealing with the requirements for disclosure of information by agencies, and the grounds on which access to information may be refused.
- f) The Principal accepts no responsibility for the accuracy or adequacy of any information it provides to the Offeror concerning the content or effect of the RTI Act.
- g) The Principal reserves the right to disclose, by publication or by means of media of its choosing, upon award of any Contract details, the name and address of the successful Offeror, a description of the relevant goods, services or goods and services, the commencement date of the awarded Contract and its price or value.

3.5 Information privacy

- a) The Principal is bound by the provisions of the *Information Privacy Act 2009* (Qld).
- b) By submitting an Offer, the Offeror warrants that it has obtained the consent of each individual whose Personal Information is included in the Offer for the:
 - i. inclusion of their Personal Information in the Offer
 - ii. use of the Personal Information by the Principal for the purpose of evaluating and awarding the Offer, and
 - iii. disclosure of the Personal Information to other parties (including professional advisors) as may be involved in assisting the Principal with the evaluation of the Offer or as otherwise permitted under these General Conditions of Offer.
- c) The Offeror indemnifies the Principal against any claim, damage or loss (including legal costs and expenses) that the Principal may incur as a consequence of a breach by the Offeror of the warranty in Clause 3.5b).
- d) Any Personal Information provided by the Principal to the Offeror must be handled by the Offeror in accordance with Parts 1 and 2 of Chapter 2, and Section 41 the *Information Privacy Act 2009* (Qld).
- e) The Offeror must immediately notify the Principal upon becoming aware of any breach of Clause 3.5b) or d).
- f) Nothing in this Clause 3.5 is intended to limit any obligation of the Offeror under the *Information Privacy Act 2009* (Qld) or *Privacy Act 1988* (Cth) that it may have as an organisation with respect to Personal Information.

3.6 Intellectual Property Rights

- a) The documents comprising an Offer become the property of the Principal upon being submitted and will not be returned to the Offeror. However, no Intellectual Property Rights in the Offer are assigned to the Principal.
- b) The Offeror grants the Principal and its officers, employees, agents and Contractors an irrevocable, perpetual, non-exclusive, royalty and fee-free licence (including the right to sub-license) to use and exercise all Intellectual Property Rights in the whole or any part of an Offer for any purpose related to the Invitation for Offer process.
- c) By submitting an Offer, the Offeror represents and warrants that:
 - i. it owns or has a right to use the Intellectual Property Rights in its Offer for the purposes of the Invitation for Offer process

- ii. it has the right and authority to grant the licence in Clause 3.6b), and
 - iii. the Principal's exercise of the rights granted by the Offeror under Clause 3.6b) will not infringe the Intellectual Property Rights or other rights of any third party.
- d) All Intellectual Property Rights in the Invitation for Offer and the Offer Documents vest in the Principal.
- e) This Clause 3.6 survives expiry or termination of any Contract that forms between the Offeror and the Principal in connection with the Invitation for Offer process.

3.7 Principal clarifications

- a) Subject to Clause 8.4, the Principal may seek clarification, amendment and/or improvement of an Offer or require the Offeror to provide additional information concerning any part of its Offer on a case-by-case basis, but the Principal is under no obligation to do so and may decide not to extend such an opportunity to all Offerors.
- b) The Offeror must respond to a request in accordance with Clause 3.7a) within 5 Business Days of the date of the Principal's request.
- c) Without limiting Clause 3.7a), the Offeror must, if required by the Principal, give a presentation in relation to the Offer at a time and place specified by the Principal.

3.8 Lowest priced Offer

The Principal is not bound to accept the lowest priced Offer or any Offer.

3.9 Withdrawal of Invitation

The Principal reserves the right in its absolute discretion to withdraw the Invitation for Offer at any time and for any reason whatsoever, without exposure to liability.

3.10 Exclusion from Invitation for Offer process

The Principal may, in its absolute discretion and without prejudice to any other rights or remedies of the Principal:

- a) exclude the Offeror from continued participation in the Invitation for Offer process, and
- b) cease to consider any Offer submitted by the Offeror, if the Principal determines that the Offeror or any of its Associates has failed to comply with any requirement or term of these General Conditions of Offer or the Offer Documents.

3.11 Cyber security

The Offeror must, at its own cost and expense:

- a) maintain effective cyber and information security measures to protect all information from unauthorised access, modification, use, copying, loss or disclosure
- b) promptly notify the Principal in writing if the Offeror becomes aware of any Data Breach, and take all reasonable steps required to prevent or stop, and mitigate the effects of, that Data Breach, and
- c) reasonably assist the Principal in connection with any action or investigation regarding any Data Breach, and provide any information reasonably requested by the Principal in connection with the Data Breach.

4 Content of the Offer

4.1 Basic Offer rules

The Offer must:

- a) be for the whole of the Consultant Services described in the Offer Documents
- b) be submitted on the Offer forms provided by the Principal and as required by these General Conditions of Offer
- c) be signed by a person or persons authorised to enter into the proposed Contract on behalf of the Offeror
- d) where:
 - the Offeror is an individual, a Local Government or a State Government entity – state the Offeror’s full name, street and postal addresses and the registered business name (if any) under which the person or entity trades
 - the Offeror is a firm or partnership – state the business name under which the firm or partnership trades, the full names and addresses of all proprietors of the firm or all partners of the partnership and the street and postal addresses of the principal place of business of the firm or partnership, and
 - the Offeror is a corporation – state the full name of the corporation, its Australian Business Number and the address of its registered office.
- e) identify all additional matters required by any issued Form C7555 *Notice to Offerors* by its number and date of issue
- f) state all money amounts in Australian currency

- g) be in accordance with the Offer Documents, including being accompanied by the documents, duly completed, required by the Form C7585 *Invitation for Offer* and any other documents required to be submitted with the Offer as specified in any of the other documents listed in Item 1.6 of the Invitation for Offer, and
- h) indicate the person who is nominated by the Offeror to be responsible for any dealings with the Principal, including to receive any Form C7555 *Notices to Offerors*.

4.2 Alterations / additions

The Offeror shall not alter or add to the Offer Documents except as required by these Form C7542 *Conditions of Offer*.

4.3 Schedules to be included

Offers shall include:

- completed Form C7586 *Offer for Consultant Service – Non-Price Component* and attachments, and
- completed Form C7587 *Offer for Consultant Service – Price Component* and attachments

in accordance with the requirements of the Offer Documents.

4.4 Verification of Offeror's Insurance

Offers shall include:

- a) an original or certified copy of the Offeror's professional indemnity insurance and public liability insurance policies that meet the requirements set out in Clause 11 of the Form C7545 *General Conditions of Contract*, or
- b) a certificate of currency for professional indemnity insurance and public liability insurance that meet the requirements set out in Clause 11 of the Form C7545 *General Conditions of Contract*.

4.5 Offered price

The Offered Price, as set out in Item 2.3 of the Form C7587 *Offer for Consultant Service – Price Component* (if relevant), shall:

- a) include all costs associated with carrying out all matters and doing all things necessary for the due and proper performance and completion of the Consultant Services, including but not limited to licence fees, royalty payments and all charges and taxes, and
- b) not be subject to adjustment for rise and fall in costs unless provision has specifically been made for such adjustment in the Offer Documents.

5 Notices to Offerors

5.1 Issued to all Offerors

Any clarification issued to Offerors concerning any aspect of the Offer Documents will be issued in the form of Form C7555 *Notice to Offerors* and will be issued simultaneously to all Offerors.

5.2 Issued before closing of Offers

- a) The Principal may issue one or more Form C7555 *Notice to Offerors* before the Closing Time for Offers to revise, amend or modify any part of the Offer Documents.
- b) Any Form C7555 *Notice to Offerors* will be issued by the Principal in a timely manner, to allow Offerors sufficient time to address all matters raised in the notices.

5.3 Reliance on Principal's explanation or interpretation

No explanation or interpretation of the Offer Documents by the Principal may be relied upon by the Offeror, unless given in the form of a Form C7555 *Notice to Offerors*.

5.4 Endorsement

The Offeror must list all Form C7555 *Notice to Offerors* received by the Offeror in Item 1.4 of the Form C7586 *Offer for Consultant Service – Non-Price Component*.

6 Offer validity period

6.1 Withdrawal of Offers

Offers may be withdrawn at any time prior to the Closing Time for Offers by notice in writing to the Principal.

6.2 Period open for acceptance

In consideration for the Principal receiving and considering the Offer, the Offeror agrees (subject to Clause 6.1) that the Offer shall remain open for acceptance by the Principal for a period of 4 months (or such time as otherwise advised to the Offeror in writing by the Principal) after the nominated Closing Time for Offers.

6.3 Variations to Offers

- a) After the Closing Time, the Offeror must not vary its Offer unless invited to do so by the Principal.

- b) The Principal may:
 - i. invite the Offeror to vary its Offer after the Closing Time, noting that the Principal is has no obligation to do so and need not extend the same opportunity to each Offeror, and
 - ii. accept or reject a variation to an Offer in its absolute discretion.
- c) Any variations to an Offer which are invited by the Principal (including as a result of a request for clarification under Clause 3.7, discussions with Offerors under Clause 8.4, negotiations under Clause 11.2) that are documented in writing and accepted by the Principal, will form part of the Offer.

7 Lodgement of Offers

7.1 Form / Delivery of Offers

For Offers must:

- a) be submitted in a non-editable format, such as Adobe Acrobat PDF or equivalent
- b) be submitted by the Closing Time as specified in the Form C7585 *Invitation for Offer*, and
- c) include the completed Form C7586 *Offer for Consultant Service – Non-Price Component* and Form C7587 *Offer for Consultant Service – Price Component*).

7.2 Late Offers

- 7.2.1 Subject to Clause 7.2.2, any Offer lodged after the nominated Closing Time for Offers will not be considered.
- 7.2.2 The Principal may, in its absolute discretion, elect to accept or consider an Offer received after the nominated Closing Time for Offers.
- 7.2.3 Where the failure to submit the Offer on time was due to technical failure, the Principal may exercise its right under Clause 7.2.2 where:
 - a) the Principal is satisfied that the Offeror has taken all reasonable steps to submit its Offer on time
 - b) the Offeror has notified the Principal of the technical failure prior to, on or as soon as practicable after the Closing Time for Offers
 - c) the technical failure was beyond the control of the Offeror, and the Offeror is able to produce evidence of that technical failure that is acceptable to the Principal, and
 - d) the Offeror submitted its Offer as soon as possible after the technical failure was resolved.

7.3 Offers forwarded indirectly or by other means

Offers forwarded indirectly or by means not specified in Clause 7.1 of these General Conditions of Offer may not be considered by the Principal.

7.4 Recipients of Offer Documents

Subject to Clauses 3.4, 3.5 and 16, for an Open Invitation, the Principal may, on receipt of a written request, make available to interested parties the names of those persons that have been issued with Offer Documents up to the Closing Time of such request. This does not apply to Limited Invitations.

8 Opening of Offers

8.1 Private opening

All Offers received will be opened in private as soon as possible after the specified Closing Time for Offers.

8.2 Advice of successful Offeror

Unsuccessful Offerors will be advised of the name of the successful Offeror (if any) and the Contract Amount in the Form C7598 *Unsuccessful Advice* or equivalent.

8.3 No Offer fees

No Offer deposit or document fee is required to make an Offer.

8.4 Discussions with Offerors

- a) After receipt of Offers, the Principal may need to clarify the nature of the Offer or component of it by way of discussions with Offerors.
- b) Clarification discussions may serve to ensure that both the Principal and the Offeror have a common understanding of the requirements and what is being offered.
- c) Clarification may be sought by the Principal in writing or through interviews with the Offeror's representatives.
- d) Any clarifications or interviews with Offerors shall be:
 - i. attended by at least 2 of the Principal's officers
 - ii. held at the Principal's premises (except where inspection of the Offeror's premises is required)

- iii. held as an official meeting with minutes being kept, and
 - iv. before the meeting closes, a consensus should be reached by both parties on the outcomes of major points discussed and a summary of such points should be signed by both parties.
- e) Where the Principal conducts post Offer clarifications with Offerors who have been shortlisted on the basis of their Offer, any agreements to proceed to negotiate that Offer will be confirmed in writing.

9 Nonconforming, conditional and alternative Offers

9.1 Nonconforming Offer

9.1.1 An Offer shall be deemed to be a Nonconforming Offer if it:

- a) does not comply with the requirements of, or if it contains provisions not required or allowed by, the Offer Documents
- b) contains alterations or erasures or sets out money amounts which are not clearly and legibly stated
- c) does not include a completed Form C7586 *Offer for Consultant Service – Non-Price Component* and Form C7587 *Offer for Consultant Service – Price Component* and attachments
- d) does not include either:
 - i. an original or certified copy of the Offeror's professional indemnity insurance and public liability insurance policies that meet the requirements set out in Clause 11 of the Form C7545 *General Conditions of Contract*, or
 - ii. a certificate of currency for professional indemnity insurance and public liability insurance that meet the requirements set out in Clause 11 of the Form C7545 *General Conditions of Contract*.
- e) does not specifically and concisely address each of the Offer selection criteria
- f) does not include an appropriate Price Schedule or Contract Amount
- g) has been made by an Offeror which has been suspended on the Queensland Government Procurement Assurance Portal
- h) does not address or comply with the *Queensland Government Supplier Code of Conduct* requirement, or
- i) does not provide information required in accordance with this Form C7542 *General Conditions of Offer*.

9.1.2 The Principal may, in its absolute discretion, give an Offeror an opportunity to remedy any Nonconformance that does not compromise the fairness of the Invitation for Offer process (for example, the Offeror failed to include an attachment which is expressly referred to in the Nonconforming Offer).

9.1.3 The Offeror acknowledges and agrees that the Principal may, in its absolute discretion, and without giving reasons:

- a) decline to consider or evaluate any Nonconforming Offer, or
- b) elect to consider and evaluate any Nonconforming Offer.

9.2 *Withdrawal of conditions in Offer*

Where an Offer contains a condition or assumption which is considered by the Principal to be unacceptable or unreasonable, the Principal may give the Offeror the opportunity to vary its offer under Clause 6.3 to withdraw such condition or assumption within 2 Business Days, otherwise the Offer will be treated as a Nonconforming Offer.

9.3 *Alternative Offers*

- a) The Offeror may submit one or more Alternative Offers but only if it has submitted a Conforming Offer.
- b) The Principal may consider and accept any Alternative Offer.

10 Discrepancies and errors in the Offer

Should an Offeror notify the Principal after the closing of Offers of any error or discrepancy in the Offer, the Principal may:

- a) provide the Offeror with an opportunity to correct the error or discrepancy and vary the Offer under Clause 6.3, or
- b) reject the Offer.

11 Assessment of Offers

11.1 *Evaluation*

- a) The Offeror must treat its Offer as its best and final offer.
- b) The Principal will evaluate Conforming Offers (and any Nonconforming Offers that it elects to evaluate) against the Evaluation Criteria.
- c) The evaluation of each Offer will be based primarily upon the information provided in the Offer.

- d) In addition to Clause 11.1c), the Principal may, in its absolute discretion, in evaluating Offers have regard to:
 - i. the Principal's and its advisors' previous experience and dealing with the Offeror
 - ii. information received from any referee contacted by the Principal in relation to the Offeror
 - iii. any information about the Offeror which is in the public domain, and
 - iv. any information which comes to the attention of the Principal or its advisors.
- e) The Offeror must ensure that its Offer addresses each of the Evaluation Criteria.

11.2 Negotiations

- a) The Principal may enter into negotiations with the Offeror regarding any aspect of its Offer, but it is under no obligation to do so, and the Principal has no obligation to extend the opportunity to negotiate the Offer to the Offeror.
- b) The objective of negotiations will be to agree all commercial issues, including price, and completely settle the terms of the proposed Contract prior to the acceptance of a successful Offer. Any amendments arising from such negotiations will be documented in, or attached to, the Letter of Acceptance.
- c) If the Principal wishes to enter into negotiations with the Offeror, the Principal may do one or more of the following:
 - i. issue the Offeror with a program and timetable for negotiations
 - ii. meet and negotiate with the Offeror, and
 - iii. require the Offeror to:
 - A. comply with the Principal's program, timetable, location and format for negotiations, and
 - B. meet and negotiate in good faith with the Principal to endeavour to completely settle the terms of the Contract.
- d) Unless otherwise stated, the Principal entering into negotiations with any Offeror does not amount to a rejection of the Offeror's Offer, or the making of a counter offer to the Offeror.
- e) The Principal may, at any time, discontinue negotiations with the Offeror and exercise any of its other rights under these General Conditions of Offer.

12 Acceptance prerequisites

12.1 Alteration of Offer

Unless expressly permitted by these General Conditions of Offer, the Offeror will not be permitted to alter its Offer after it has been lodged.

12.2 Additional information

Notwithstanding any other requirements of the Offer Documents, the Principal may require the Offeror to submit additional information to allow further consideration of its Offer before any Offer is accepted.

12.3 Failure to submit additional information

Should the Offeror fail to submit any of the additional information so required by the date and time stipulated by the Principal, the Principal may decline to consider the Offer any further.

12.4 Sub-consultant information

Without limiting the generality of the previous provisions, the Principal may require that the Offeror submit similar information to that required to be furnished by the Offeror by these General Conditions of Offer in respect of any of the Offeror's proposed sub-consultants.

13 Acceptance of an Offer

An Offer will not be deemed to have been accepted until a Form C7599 *Letter of Acceptance* or equivalent has been received by the Offeror, via email attaching a scanned copy of the Form C7599 *Letter of Acceptance*.

14 Feedback to unsuccessful Offerors

Following award of any Contract, unsuccessful Offerors may apply in writing to the Principal's delegate nominated in the Form C7585 *Invitation for Offer*, requesting a meeting for feedback on their Offer. Feedback may include an explanation of why the Offer was unsuccessful, including any areas of weakness or non-compliance in the Offer. Suggestions may be given for improvements to future submissions. Details of individual Offers including scores will not be divulged.

15 Cost of Offer preparation

The Offeror is responsible for all costs associated with preparing the response to the Invitation for Offer. The Principal will make no payment to the Offeror:

- a) for any costs, losses or expenses incurred by the Offeror in preparing its Offer

- b) in respect of any discussions, clarifications, enquiries or requests for details or information made by or on behalf of the Principal after the Closing Time for Offers, or
- c) for any work undertaken by the Offeror related to the Invitation for Offer process after the Closing Time for Offers, including clarifications with the Principal.

16 Confidential information

16.1 Definition of Confidential Information

For the purposes of this Clause 16, '**Confidential Information**' means all information disclosed by or on behalf of the Principal or the Offeror (**Discloser**) to the other party (**Recipient**) in connection with the Invitation for Offer or created using that information, which is confidential in nature and designated as confidential, or which a reasonable person receiving the information would understand or perceive to be sensitive or confidential, and all information to the extent it is derived from that information. However, 'Confidential Information' does not include any information which:

- a) is or becomes public, except through breach of a confidentiality obligation
- b) the Recipient can demonstrate was already in its possession or was independently developed by the Recipient, or
- c) the Recipient receives from another person on a non-confidential basis, except through breach of a confidentiality obligation.

16.2 Principal's undertaking

- a) The Offeror may notify the Principal of any documents or information that the Offeror considers to be Confidential Information of the Offeror and may request to the Principal that such documents or information not be published or disclosed.
- b) The Principal will consider any request from the Offeror under Clause 16.2a) but has no obligation not to publish or disclose any document or information referred to it under Clause 16.2a).
- c) Where the Principal has previously informed the Offeror that information or documentation notified to the Principal under Clause 16.2a) will not be published or disclosed, the Principal may at any time amend or alter its decision by notice to the Offeror.
- d) The Offeror acknowledges and agrees that the Principal may have an obligation to publish information relating to these General Conditions of Offer, the Offer Documents and any Contract without the consent of the Offeror.

16.3 Offeror's undertaking

The Offeror hereby undertakes:

- a) to treat as confidential and not disclose (unless required by law), duplicate, use or permit the use of, at any time and in any way, Confidential Information of the Principal, other than for the purposes of the Invitation for Offer process and providing any Consultant Services which are awarded to the Offeror, and will protect fully the confidentiality of the Confidential Information
- b) to limit the disclosure of the Confidential Information to those of its officers, employees and sub-consultants to whom such a disclosure is strictly necessary for the purposes of the Invitation for Offer process and providing any Consultant Services which are awarded to the Offeror, and
- c) not to use the name of the Principal for promotion of the Offeror's Consultant Services, unless the Principal has first given its written consent, for which consent will not be unreasonably withheld.

17 Compliance with codes and policies

17.1 Queensland Procurement Policy and Queensland Government Supplier Code of Conduct

- a) The Offeror warrants that it, and any sub-consultant(s) that it may put forward in its Offer, adhere to the *Queensland Procurement Policy* and the *Queensland Government Supplier Code of Conduct*.
- b) The Offeror acknowledges that a failure by it or any sub-consultant to comply with government policies and legislation that apply to the Consultant Services may result in:
 - i. consequences under the Procurement Assurance Model, and
 - ii. the imposition of a demerit or sanction under the *Queensland Government Supplier Code of Conduct*,

in addition to any other remedies available to the Principal under any Contract made with the Offeror with respect to the Consultant Services.

- c) The Offeror acknowledges that the Principal may:
 - i. obtain information about the Offeror relevant to the Offeror's compliance with the *Queensland Procurement Policy* and the *Queensland Government Supplier Code of Conduct* which may be held by any Government Department or Instrumentality, and
 - ii. access all information relevant to assessing the Offeror's compliance with the *Queensland Procurement Policy* and the *Queensland Government Supplier Code of*

Conduct and take the information into account in assessing the Offeror's compliance with the *Queensland Procurement Policy* and the *Queensland Government Supplier Code of Conduct*.

- d) The Offeror must agree to comply with the *Queensland Government Supplier Code of Conduct* in Section 6 of Form C7586 *Offer for Consultant Service – Non-Price Component*.

17.2 Purposeful public procurement

- a) The Offeror will support the Principal in its 'purposeful public procurement' (as defined in the *Queensland Procurement Policy*) outcomes, as advised by the Principal from time to time, and will maintain any tender commitments in respect of such outcomes.

18 Ethics

18.1 No collusion

By submitting an Offer, the Offeror warrants and represents to the Principal that:

- a) it has no knowledge of the proposed fees of any other Offeror at the time of submission of its Offer
- b) except as disclosed in its Offer, it has not entered into any Contract, arrangement or understanding to pay or allow any money, directly or indirectly:
 - i. to a trade or industry association (above the published standard membership fee), or
 - ii. to, or on behalf of, any other Offeror in relation to that Offer or any Contract to be entered into consequent to that Offer, nor paid or allowed any money on that account, nor will it pay or allow any money on that account.
- c) except by prior agreement with the Principal, it has not:
 - i. paid or allowed, or
 - ii. 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 in relation to its Offer or any consequent Contract, nor will it pay or allow or receive any such monies; and
- d) if, without the Principal's prior agreement, it receives or has received any money or allowance from or on behalf of any other Offeror in relation to its Offer, the other Offeror's Offer or any consequent Contract, then without prejudice to any other right or remedy of the Principal, the Consultant agrees that such money or allowance is deemed to be held by the Offeror on trust for the Principal and shall be paid to the Principal immediately.

18.2 No canvassing

- a) The Offeror must not (and must ensure that its Associates do not) approach or communicate, or attempt to approach or communicate, in any way with any elected official, officer, employee or other personnel of the Principal with respect to the Invitation for Offer process, other than via the contact details nominated in Item 3.1 of the Invitation for Offer.
- b) If the Offeror or any of its Associates breach Clause 18.2a), the Principal may, at its discretion:
 - i. immediately exclude the Offeror from the Invitation for Offer process by notice to the Offeror, or
 - ii. reject any Offer submitted by the Offeror.

18.3 No incentives

- a) The Offeror must not (and must ensure that its Associates do not) give or offer to the Principal (or any employee of the Principal, or to a parent, spouse, child or associate of the Principal or employee) any inducement, gift or reward, which could in any way influence or be perceived to influence the Principal's actions or decisions with respect to any Offer.
- b) If the Principal discovers at any time that the Offeror or any of its Associates has breached Clause 18.3a), the Principal may reject or cease any evaluation of any Offer by the Offeror or terminate any consequent Contract entered into.

18.4 No Conflicts of Interest

- a) The Offeror:
 - i. warrants that, to the best of its knowledge, as at the date of its Offer, neither the Offeror nor any of its Associates have, or are likely to have, any Conflict of Interest in any matters connected with the Invitation for Offer process, and
 - ii. must complete and submit with its Offer, the Conflict of Interest section of the Offer Documents.
- b) If a Conflict of Interest or risk of Conflict of Interest arises during the Invitation for Offer process, the Offeror must immediately give written notice of the Conflict of Interest, or the risk of it, to the Principal.

19 Moral rights

- a) If the Offeror is an individual, the individual consents to any act or omission done by the Principal in the exercise of Intellectual Property Rights in the Offer Material granted under these General Conditions of Offer or the Offer Documents that might otherwise constitute an infringement of the individual's Moral Rights, and without limitation, the individual consents to:
- i. the Principal determining in its entire discretion whether or not the individual will be attributed as an author of the Offer Material and if the individual will be attributed, that attribution will occur in a manner acceptable to the Principal
 - ii. any amendments, deletion, destruction, alterations, relocation or selection of the Offer Material (or any part thereof) at the discretion of the Principal, and
 - iii. the publication or communication of the Offer Material or any part thereof.
- b) Where the Offeror is not an individual, before any individual commences work in respect of the Offer Material on behalf of the Offeror, the Offeror shall obtain from that individual, in writing, and provide to the Principal, on request:
- i. all consents, permissions and assignments to enable the Principal to exercise in full, without cost to the Principal and without impediment, the rights granted under this Clause 19; and
 - ii. without limiting Clause 19b)i., a consent to any act or omission which would otherwise infringe the Moral Rights of that individual. If requested by the Principal, such consent will be in a form specified by the Principal.
- c) For the purpose of this clause:
- i. **'Moral Rights'** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing at the beginning date or which may come into existence on or after the beginning of the agreement.
 - ii. **'Offer Material'** means any material that exists at the beginning of the Invitation for Offer process and which is provided in connection with the Offer, and any material provided in connection with the Offer that is created, written or otherwise brought into existence by or on behalf of the Offeror in the course of preparing and submitting the Offer.

20 General

20.1 Joint venture bids and subcontracting

- a) The Offeror acknowledges and agrees that it may submit a joint Offer as part of an incorporated or unincorporated joint venture provided that:
 - i. all participants in the joint venture are Prequalified Consultants under the Principal's Prequalification System for Consultants for Engineering Projects at the levels for the nominated categories set out in Item 1.5.1.1 of the Invitation for Offer (unless Clause 20.1b) applies); and
 - ii. the Principal will only enter into a Contract with a single Offeror or a joint venture of Offerors that are each Prequalified Consultants.
- b) Where Item 1.5.1 of the Invitation for Offer specifies that the Consultant Service may be provided by a consultant that is not a Prequalified Consultant, the participants in the joint venture are not required to be Prequalified Consultants.
- c) If the Offeror wishes to submit an Offer on the basis that it will act as a Principal Contractor by subcontracting part of the Consultant Service, it must:
 - i. not propose to subcontract any of the categories of the Consultant Services other than those specified in Item 1.5.1.2 of the Invitation for Offer
 - ii. ensure that each proposed sub-consultant is a Prequalified Consultant for the appropriate categories (unless Item 1.5.1.2 of the Invitation for Offer specifies that the sub-consultant is not required to be a Prequalified Consultant, in which case the proposed sub-consultant does not have to be a Prequalified Consultant)
 - iii. provide details about each proposed key team member of the sub-consultant in Item 3.1.1 of the Form C7586 *Offer for Consultant Service – Non-Price Component*, and
 - iv. provide the Principal with any additional information requested by the Principal about the proposed subcontracting arrangement.

20.2 No legal relationship created

- a) The Invitation for Offer is not an offer; it is a request for the Offeror to submit an Offer to the Principal for the supply of Consultant Services.
- b) Subject to Clause 20.2c), if a court finds the Principal liable to the Offeror with respect to the Invitation for Offer, these General Conditions of Offer, the Offer Documents or any other aspect of the Offer process, the Offeror agrees that total aggregate liability of the

Principal to the Offeror arising out of or in connection with the Offeror's participation in the Invitation for Offer process, including for any:

- i. negligence of the Principal, its officers, employees, Contractors or agents, and
 - ii. any breach by the Principal of the terms of any process Contract that is found to exist between the Principal and the Offeror, is limited to \$100.
- c) The Principal is not liable for any Consequential Loss suffered by the Offeror in connection with this Invitation for Offer process or any Offer Documents.
- d) This Clause 20.2 survives expiry or termination of any process Contract that forms between the Principal and the Offeror in connection with the Invitation for Offer process.

20.3 No public announcements or advertising

The Offeror must not any publish any information in relation to the award of any Contract other than with the prior written approval of the Principal.

20.4 Governing law and jurisdiction

- a) These General Conditions of Offer are governed by and are to be construed in accordance with the laws applicable in Queensland.
- b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

20.5 Severability

- a) Subject to Clause 20.5b), if any provision or term of these General Conditions of Offer is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of these General Conditions of Offer.
- b) Clause 20.5a) does not apply if severing the provision:
 - i. materially alters the:
 - A. scope and nature of these General Conditions of Offer, or
 - B. the relative commercial or financial positions of the parties, or
 - ii. would be contrary to public policy.

20.6 Waiver and exercise of rights

- a) A single or partial exercise or waiver by a party of a right relating to these General Conditions of Offer does not prevent any other exercise of that right or the exercise of any other right.
- b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

