

**Infrastructure Building and Construction Panel (IBCP)**

**Request for Quote (RFQ) – Part B – Terms and  
Conditions**

**SOA No. TMR12920**

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## Part B – RFQ Terms and Conditions

### 1 Definitions and interpretation

#### 1.1 Definitions

In this Request for Quote, these terms have the following meanings:

**Table 1.1 – Definitions**

| Term                 | Definition   |
|----------------------|--|
| Addenda              | A written document titled 'Addenda to Request for Quote' that references this Request for Quote and is issued by the Eligible Customer.  |
| Associate            | Any Related Body Corporate of the Supplier and any officer, employee, agent, contractor, consultant or advisor of the Supplier.  |
| Closing Date         | The time and date set out in the RFQ Details.  |
| 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 Supplier to submit a Quote in good faith and objectively.   |
| Conforming Quote     | The meaning given by <b>Clause 6.4(a)</b> of these RFQ Terms and Conditions.   |
| Consequential Loss   | Means: <ul style="list-style-type: none"> <li>a) indirect loss</li> <li>b) loss of profits</li> <li>c) loss of revenue</li> <li>d) loss of savings</li> <li>e) loss of opportunity</li> <li>f) loss of bargain</li> <li>g) loss of use</li> <li>h) damage to credit rating</li> <li>i) loss of or damage to reputation, future reputation or publicity</li> <li>j) loss in connection with claims made by third parties</li> <li>k) remote, abnormal or unforeseeable loss, and</li> <li>l) 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 Eligible Customer and/or the Supplier at any time.</li> </ul> |
| Contract             | Has the meaning given in the Contract Conditions.  |

| Term                                       | Definition  |
|--|---|
| Contract Conditions                        | The contract conditions available in the hyperlink in the RFQ Details.  |
| Data Breach                                | <p>Any actual, threatened or suspected cyber or information security incident affecting the security, integrity or availability of the Eligible Customer’s information (including any Eligible Customer Confidential Information and Eligible Customer Supplied Documents) held by or on behalf of the Supplier, and includes:</p> <ul style="list-style-type: none"> <li>a) any unauthorised access, disclosure, modification, use, copying, or loss of any Eligible Customer’s information (whether or not confidential in nature); and</li> <li>b) any ‘eligible data breach’ (within the meaning of the Information Privacy Act or the Privacy Act) in respect of the Eligible Customer’s information.</li> </ul> |
| Eligible Customer                          | The entity identified in the RFQ Details.   |
| Eligible Customer Confidential Information | Any technical, commercial or other information, ideas, concepts, know-how, data, drawings, specifications or designs of any kind in any form or medium supplied or made available by the Eligible Customer for the submission of the Quote, including the information in this Request for Quote.  |
| Eligible Customer Supplied Documents       | The documents specified in the Technical Specifications.  |
| Evaluation Criteria                        | The evaluation criteria specified in the RFQ Details.   |
| IBCP                                       | The Infrastructure and Building Construction Panel established by the Department of Transport and Main Roads.   |
| IBCP Supplier                              | A supplier that is Prequalified and has entered into an SOA with the Principal under the IBCP.  |
| Information Privacy Act                    | The <i>Information Privacy Act 2009</i> (Qld).  |
| Intellectual Property Rights               | Includes all copyright, trademark, design, patents, semiconductor or circuit layout rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the SOA but excludes Moral Rights.   |
| Key Personnel                              | The individuals identified in the RFQ Response Form.  |

| Term   | Definition  |
|--|---|
| Law  | <p>All:</p> <ul style="list-style-type: none"> <li>a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations in force from time to time in Queensland and any other relevant jurisdiction</li> <li>b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Services, and</li> <li>c) the requirements of any authority with jurisdiction in respect of the Services.</li> </ul> |
| Letter of Acceptance                           | A letter titled “Letter of Acceptance” issued by the Eligible Customer to the Supplier pursuant to this Request for Quote that forms a Contract between the Eligible Customer and Supplier.   |
| Marketplace Category                           | Has the meaning given in the SOA Conditions.  |
| Non-conforming Quote                           | The meaning given by Clause 6.4(b) of these RFQ Terms and Conditions.   |
| Personal Information                           | The meaning given in the <i>Information Privacy Act</i> .   |
| Prequalified                                   | Has the meaning given in the SOA Conditions.  |
| Prequalification Category                      | Has the meaning given in the SOA Conditions.  |
| Prequalification Level                         | Has the meaning given in the SOA Conditions.  |
| Pre-lodgement Conference                       | The conference referred to in the RFQ Details.  |
| Principal                                      | Principal has the meaning given to it in the SOA Conditions.  |
| Queensland Government Supplier Code of Conduct | Means the Queensland Government policy titled “ <i>Queensland Government Supplier Code of Conduct</i> ” or any policy that replaces that policy.  |
| Queensland Procurement Policy                  | The document titled <i>Queensland Procurement Policy</i> published by the Queensland Government, as amended or replaced by the Queensland Government.   |
| Quote  | An offer made by the Supplier to the Eligible Customer submitted in response to this Request for Quote (as varied in accordance with Clause 9, including Conforming Quotes, Non-conforming Quotes, completed RFQ Response Forms, Required Information and any other supporting documents.   |
| Quote Documents                                | The document package comprising the Request for Quote and each of its schedules and annexures but does not include any Addenda.   |
| Related Body Corporate                         | Has the meaning given to it in the <i>Corporations Act 2000</i> (Cth).  |

| Term                     | Definition  |
|--------------------------|---|
| Request for Quote        | <ul style="list-style-type: none"> <li>a) This document titled Request for Quote and its schedules and its annexures,</li> <li>b) the RFQ Response Form, and</li> <li>c) all Addenda.</li> </ul>  |
| Required Information     | The information and documentation that the Supplier must provide to the Eligible Customer, as specified in the RFQ Response Form.   |
| RFQ Details              | Part A of this Request for Quote.   |
| RFQ Notice to Offerors   | The meaning given in Clause 4.2(b) of this RFQ Terms and Conditions.  |
| RFQ Process              | <p>The process of:</p> <ul style="list-style-type: none"> <li>a) the Eligible Customer inviting one or more IBCP Suppliers to submit a Quote to deliver the Services</li> <li>b) preparation and submission of a Quote by the Supplier (should the Supplier receive a Request for Quote and elect to respond to the Request for Quote)</li> <li>c) communications and negotiations between the Eligible Customer and the Supplier in relation to the Request for Quote and the Quote</li> <li>d) subsequent consideration and evaluation of Quotes by the Eligible Customer, and</li> <li>e) the Eligible Customer determining which IBCP Supplier (if any) to which it will issue a Letter of Acceptance.</li> </ul> |
| RFQ Response Form        | Part D of this Request for Quote.   |
| RFQ Terms and Conditions | Part B of this Request for Quote.   |
| RTI Act                  | The <i>Right to Information Act 2009</i> (Qld).   |
| Services                 | The services and deliverables specified in the Technical Specifications.  |
| SOA                      | The document titled <i>Infrastructure and Building Construction Panel (IBCP) Standing Offer Arrangement (SOA)</i> agreed between the Principal and the Supplier when the Supplier applied to become a panel member of the IBCP.   |
| SOA Conditions           | Part C of the SOA titled "SOA Conditions".  |
| Supplier                 | An "IBCP Supplier", as defined under the SOA.   |
| Technical Specifications | Part C of this Request for Quote.   |

| Term            | Definition  |
|-----------------|---|
| Tender Portal   | The facility or system through which Quotes must be submitted specified in the RFQ Details. |
| Validity Period | The period of time specified in the RFQ Details.  |

## 1.2 Undefined terms

In this Request for Quote, where a term is not defined in Clause 1.1, but is defined in the Contract Conditions, it has the meaning given in the Contract Conditions.

## 1.3 Interpretation

Unless expressed to the contrary, in this Request for Quote:

- a) words in the singular include the plural and vice versa;
- b) any gender includes the other genders;
- c) all references to time are to the time in Brisbane, Queensland;
- d) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- e) “includes” means includes without limitation (and “including” shall have an equivalent meaning);
- f) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- g) a reference to:
  - i. a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - ii. a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;
  - iii. any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and
  - iv. an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation; and
- h) clause, schedule and annexure references in this Request for Quote are references to clauses, schedules and annexures of this Request for Quote, unless stated otherwise.

## **1.4 Headings**

Headings do not affect the interpretation of this Request for Quote.

## **1.5 Inconsistency**

In the event of an inconsistency between the parts of this Request for Quote listed in this **Clause 1.5**, the document higher in the list prevails to the extent of the inconsistency:

- a) this Request for Quote (excluding the Contract Conditions and the RFQ Response Form);
- b) the Contract Conditions; and
- c) the RFQ Response Form.

## **2 Purpose and objective**

### **2.1 Purpose of this Request for Quote**

The purpose of this Request for Quote is to:

- a) invite Quotes for the supply of the Services on the terms of the Contract Conditions; and
- b) provide the Supplier with information on the Eligible Customer's requirements and the arrangements for the submission and evaluation of Quotes.

## **3 Invitation**

### **3.1 Invitation to submit a Quote**

- a) The Supplier is invited to submit a Quote to perform the Services on the terms of the Contract Conditions.
- b) The Supplier has no obligation to submit a Quote in response to this Request for Quote.
- c) The Eligible Customer has no obligation to:
  - i. consider any Quote that does not comply with the requirements and terms of this Request for Quote or which is a Non-conforming Quote; and
  - ii. provide any reasons for a decision not to consider any Quote that does not comply with the requirements and terms of this Request for Quote.

### **3.2 Joint venture bids and subcontracting**

- a) This Request for Quote is issued to the Supplier, who may be a part of an incorporated or unincorporated joint venture.

- b) Quotes submitted jointly on behalf of the Supplier and any non-IBCP Supplier are not permitted. The Eligible Customer will only enter into a Contract with a single IBCP Supplier or a joint venture of IBCP Suppliers for the performance of the Services.
- c) Where the Contract is proposed to be entered into with more than one IBCP Supplier, each of which is a member of a joint venture, the Principal will provide a form of Contract Conditions suitable to contract with a joint venture.
- d) If the Supplier wishes to submit a Quote on the basis that it will act as a principal contractor by subcontracting part of the Services, it must:
  - i. not propose to subcontract any of the Services specified in the RFQ Details as Services that must not be subcontracted;
  - ii. ensure that each proposed subcontractor is appropriately Prequalified and is an existing IBCP Supplier;
  - iii. provide the details about each proposed subcontractor that the Supplier proposes to use as required in the RFQ Response Form; and
  - iv. provide the Eligible Customer with any additional information requested by the Eligible Customer about the proposed subcontracting arrangement.

## **4 RFQ Process**

### **4.1 *No legal relationship created***

- a) This Request for Quote is not an offer, it is a request for the Supplier to submit a Quote to the Eligible Customer for the supply of the Services.
- b) Subject to Clause 4.1(c), if a court finds the Eligible Customer liable to the Supplier with respect to the RFQ Process, the Supplier agrees that total aggregate liability of the Eligible Customer to the Supplier arising out of or in connection with the Supplier's participation in the RFQ Process, including for any:
  - i. negligence of the Eligible Customer, its officers, employees, contractors or agents; and
  - ii. any breach by the Eligible Customer of the terms of any process contract that is found to exist between the Eligible Customer and the Supplier,is limited to \$100.
- c) The Eligible Customer is not liable for any Consequential Loss suffered by the Supplier in connection with this Request for Quote or any RFQ Response Form submitted by the Supplier.

- d) This Clause 4.1 survives expiry or termination of any process contract that forms between the Eligible Customer and the Supplier in connection with the RFQ Process.

#### **4.2 RFQ Notice to Offerors**

- a) The Eligible Customer may, at its absolute discretion, at any time and by written notice issued through the Tender Portal:
  - i. vary, suspend or terminate the RFQ Process;
  - ii. vary the terms of this Request for Quote;
  - iii. require each Supplier (as a result of a variation to this Request for Quote) to submit revised pricing and rates; and
  - iv. extend the Closing Date.
- b) All variations to this Request for Quote (**RFQ Variation Notice**) will be issued by the Eligible Customer through the Tender Portal in Addenda that will form part of the terms of this Request for Quote on and from the date specified in the Addenda or, if no date is specified, immediately.
- c) The Supplier must list and acknowledge its receipt of each RFQ Variation Notice in its Quote.

#### **4.3 Exclusion from RFQ Process**

- a) The Eligible Customer may, in its absolute discretion and without prejudice to any other rights or remedies of the Eligible Customer:
  - i. exclude the Supplier from continued participation in the RFQ Process; and
  - ii. cease to consider any Quote submitted by the Supplier,if the Eligible Customer determines that the Supplier or any of its Associates has failed to comply with any requirement or term of this Request for Quote.
- b) The Eligible Customer may, in its absolute discretion, waive some or all of the obligations of the Supplier under this Request for Quote.

### **5 Supplier's obligations**

#### **5.1 Communication**

The Supplier acknowledges and agrees that, unless otherwise notified by the Eligible Customer or as part of a Pre-lodgement Conference, the Tender Portal is the sole and exclusive method for communication between the Supplier and the Eligible Customer with respect to the RFQ Process.

## **5.2 No canvassing**

- a) The Supplier 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 Eligible Customer with respect to this Request for Quote or the Services, other than through the Tender Portal.
- b) If the Supplier or any of its Associates breach Clause 5.2(a), the Eligible Customer may, at its discretion:
  - i. immediately exclude the Supplier from the RFQ Process by notice to the Supplier; or
  - ii. reject any Quote submitted by the Supplier.

## **5.3 No incentives**

- a) The Supplier must not (and must ensure that its Associates do not) give or offer to the Eligible Customer (or any employee of the Eligible Customer, or to a parent, spouse, child or associate of the Eligible Customer or employee) any inducement, gift or reward, which could in any way influence or be perceived to influence the Eligible Customer's actions or decisions with respect to any Quote.
- b) If the Eligible Customer discovers at any time that the Supplier or any of its Associates has breached Clause 5.3(a), the Eligible Customer may reject, or cease any evaluation of any Quote by the Supplier and terminate any Contract made between the Eligible Customer and the Supplier.

## **5.4 No collusion**

The Supplier represents and warrants that its Quote is in all respects an independent Quote and that no collusion has taken place between the Supplier and any other Supplier or interested party in the preparation of the whole or any part of the Quote.

## **5.5 No Conflicts of Interest**

- a) Each Supplier:
  - i. warrants that, to the best of its knowledge, as at the date of its Quote, neither the Supplier nor any of its Associates have, or are likely to have, any Conflict of Interest in any matters connected with the RFQ Process; and
  - ii. must complete and submit with its Quote, the Conflict of Interest section of the RFQ Response Form.

- b) If a Conflict of Interest or risk of Conflict of Interest arises during the RFQ Process, the Supplier must immediately give written notice of the Conflict of Interest, or the risk of it, to the Eligible Customer through the Tender Portal.

## **5.6 Queensland Procurement Policy and Queensland Government Supplier Code of Conduct**

- a) If the Eligible Customer issues a Letter of Acceptance to the Supplier, the Supplier:
  - i. must ensure that it and its subcontractors, in carrying out the Services under the Contract Conditions:
    - A. comply with the principles of the *Queensland Procurement Policy* (where applicable) and any requirements under the Contract Conditions in this regard; and
    - B. adhere to the *Queensland Government Supplier Code of Conduct* for the term of the Contract;
  - ii. warrants that it and its subcontractors adhere to the *Queensland Government Supplier Code of Conduct*; and
  - iii. acknowledges that its failure or any of its subcontractors' failure to adhere to the *Queensland Government Supplier Code of Conduct* is a breach of contract.
- b) The Supplier acknowledges that a failure to comply with government policies and legislation that apply to the work under the Contract or the Supplier's obligations under the Contract 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 Eligible Customer under a Contract.
- c) The Supplier acknowledges that the Eligible Customer may:
  - i. obtain information about the Supplier relevant to the Supplier's compliance with the *Queensland Procurement Policy* and the *Queensland Government Supplier Code of Conduct* which may be held by any Queensland Government body; and

- ii. access all information relevant to assessing the Supplier's compliance with the *Queensland Procurement Policy* and the *Queensland Government Supplier Code of Conduct* and take the information into account in assessing the Supplier's compliance with the *Queensland Procurement Policy* and the *Queensland Government Supplier Code of Conduct*.
- d) The Supplier will support the Eligible Customer in its 'purposeful public procurement' (as defined in the *Queensland Procurement Policy*) outcomes, as advised by the Eligible Customer from time to time, and will maintain any tender commitments in respect of such outcomes.

### **5.7 Supplier's warranties**

- a) By lodging a Quote, the Supplier represents and warrants to the Eligible Customer:
  - i. the accuracy of each of the matters set out in the Supplier's Quote;
  - ii. that it has not relied, and will not rely, upon the Quote Documents or any Addenda as being accurate, adequate, suitable or complete for the purposes of enabling it to supply the Services;
  - iii. that it has not relied, and will not rely, on information provided by or on behalf of the Eligible Customer without independently verifying such information and independently satisfying itself as to the accuracy, adequacy, suitability or correctness of such information;
  - iv. that it has satisfied itself as to the local conditions, environment and facilities that may impact on its ability to supply the Services;
  - v. that it has examined, and will examine, all information relevant to the risks, contingencies and other circumstances having an effect on its Quote and the supply of the Services;
  - vi. that it has fully informed itself of the nature of the obligations to be performed under the Contract Conditions, including the labour, plant, materials, mechanical plant and other resources necessary, suitable or desirable to perform the obligations under the Contract Conditions;

- vii. that it has satisfied itself as to the accuracy, completeness and sufficiency of its Quote for the performance of the obligations under the Contract Conditions and that its rates and prices include compliance with all of its obligations under the Contract Conditions and of all matters and things necessary for the due and proper performance of the Contract Conditions in accordance with the terms of the Contract Conditions; and
  - viii. that it has carried out its own investigations as to the feasibility of its Quote and relied on those investigations.
- b) The Supplier acknowledges and agrees that the Eligible Customer will rely upon the representations made and warranties given in Clause 5.7(a) in considering any Quote of the Supplier and in considering whether to enter into the Contract Conditions with the Supplier.
  - c) Failure by the Supplier to do any or all of the things that it represents or warrants to have done, or will do, will not relieve the Supplier of its obligations to perform and complete its obligations under the Contract that may be made between the Supplier and the Eligible Customer.

## **5.8 Expenditure of money**

Each Supplier:

- a) expends money, makes commitments and incurs liabilities in considering and responding to this Request for Quote at its own risk and expense; and
- b) has no claim against the Eligible Customer for any of the expenses, commitments or liability contemplated by Clause 5.8(a).

## **5.9 Information or clarification provided by the Eligible Customer**

- a) If the Supplier requests information or clarification from the Eligible Customer on any part of this Request for Quote:
  - i. the Supplier must direct its enquiries in writing through the Tender Portal;
  - ii. the Eligible Customer is not bound by any information or clarification provided orally (including at the Pre-lodgement Conference) or in writing unless it is issued through an Addenda;
  - iii. the information or clarification provided by the Eligible Customer does not form part of this Request for Quote unless it is issued through an Addenda;

- iv. the Supplier consents to the Eligible Customer disclosing any request for information or clarification made by the Supplier (not including the identity of the Supplier), together with the written response of the Eligible Customer to all other Suppliers being invited to respond to this RFQ; and
  - v. in acknowledgement of Clause 5.9(a)(iv), if the Supplier claims that part or all of its request is confidential and the Eligible Customer does not agree that the information is confidential, the Eligible Customer will provide the Supplier with an opportunity to withdraw or amend its request and the Eligible Customer has no obligation to consider or respond to the request.
- b) In addition to the Pre-lodgement Conference, the Eligible Customer may decide prior to the Closing Date to hold briefing and clarification sessions for IBCP Suppliers (whether separately or together) at times and venues specified by the Eligible Customer.
  - c) The Eligible Customer does not represent or warrant that the information provided by the Eligible Customer as part of the RFQ Process is complete or accurate.

## **6 Quotes**

### **6.1 Content of Quotes**

- a) Each Quote must:
  - i. be in legible English; and
  - ii. be lodged in accordance with Clause 6.3.
- b) If the Quote is executed under a power of attorney, the Supplier must submit a certified copy of the deed under which the attorney's authority to execute the Quote is derived.

### **6.2 Format of Quotes**

Each Quote must:

- a) be complete; and
- b) not be supplemented by cross-references to information contained in any other Quote or documents.

### **6.3 Lodgement of Quotes**

- a) The Supplier must lodge its Quote through the Tender Portal on or before the Closing Date. No other method of lodging a Quote is acceptable.

- b) The Eligible Customer has no obligation to accept or consider a Quote which is not received through the Tender Portal on or before the Closing Date.
- c) The Eligible Customer may, in its absolute discretion, elect to accept or consider a Quote received after the Closing Date if:
  - i. the Eligible Customer is satisfied that the Supplier has taken all reasonable steps to submit its Quote on time and has notified the Eligible Customer of the technical failure prior to, on or as soon as practicable after the Closing Date;
  - ii. the Supplier was prevented from submitting on or before the Closing Date due to technical failure beyond the control of the Supplier, and the Supplier is able to produce evidence of that technical failure that is acceptable to the Eligible Customer; and
  - iii. the Supplier submitted its Quote as soon as a possible after the technical failure was resolved.

#### **6.4 Confirming Quotes**

- a) A Conforming Quote is a Quote that:
  - i. is lodged on or before the Closing Date or is accepted by the Eligible Customer under Clause 6.3(c);
  - ii. is accompanied by a fully completed RFQ Response Form properly executed by the Supplier;
  - iii. includes all information and documentation required to be provided by this Request for Quote (including all Required Information);
  - iv. completes all fields of the RFQ Response Form that are required to be completed, including any spreadsheets and tables;
  - v. is submitted in the format required by Clause 6.2;
  - vi. meets the requirements of Clause 6.5 with respect to any departures
  - vii. is not a Quote that is determined to be a Non-conforming Quote under Clause 7.2(e) or any other term of this Request for Quote which:
    - A. deems, or allows the Eligible Customer to deem, a Quote to be a Non-conforming Quote;
    - B. allows the Eligible Customer not to accept or consider a Quote; or
    - C. causes a Quote to become a Non-conforming Quote;

- viii. provides the Eligible Customer with all information and responses required by this Request for Quote;
  - ix. does not amend, remove or delete any parts of the Quote Documents, the RFQ Response Form or other forms or documents that the Supplier is required to complete as part of its Quote; and
  - x. complies with the requirements, terms and conditions of this Request for Quote.
- b) A Non-conforming Quote is a Quote that does not comply with one or more of the requirements in Clause 6.4(a) or which is deemed a Non-conforming Quote under Clause 7.2(e) or any other provision of this Request for Quote.
- c) The Supplier acknowledges and agrees that the Eligible Customer may, in its absolute discretion, and without giving reasons:
- i. decline to consider or evaluate any Non-conforming Quote; or
  - ii. after consideration or evaluation, not accept any Non-conforming Quote.

## **6.5 Departures**

- a) Unless otherwise agreed in writing by the Eligible Customer, no amendments or departures are permitted by the successful Supplier to the terms of the Contract Conditions.
- b) Any amendments or departures provided, requested or submitted by the Supplier with respect to the Services (whether made during or after the RFQ Process) do not form part of any Contract Conditions unless agreed in writing by the Eligible Customer.

## **6.6 No public opening**

Quotes will not be publicly opened by the Eligible Customer.

## **6.7 Validity Period**

Each Quote remains valid and is irrevocable:

- a) for the Validity Period; or
- b) until the Eligible Customer notifies the Supplier that its Quote has not been accepted,

whichever occurs first.

## **6.8 Intellectual Property Rights**

- a) The documents comprising each Quote by the Supplier become the property of the Eligible Customer upon being submitted and will not be returned to the Supplier. However, no Intellectual Property Rights in the Quote are assigned to the Eligible Customer.
- b) The Supplier grants the Eligible Customer and its officers, employees, agents and contractors an irrevocable, perpetual, non-exclusive, royalty and fee free licence (including the right to sublicense) to use and exercise all Intellectual Property Rights in the whole or any part of the Supplier's Quote for any purpose related to the RFQ Process.
- c) By submitting a Quote, the Supplier represents and warrants that:
  - i. it owns or has a right to use the Intellectual Property Rights in its Quote for the purposes of the RFQ Process
  - ii. it has the right and authority to grant the licence in Clause 6.8(b); and
  - iii. the Eligible Customer's exercise of the rights granted by the Supplier under Clause 6.8(b) will not infringe the Intellectual Property Rights or other rights of any third party.
- d) All Intellectual Property Rights in the Request for Quote vest in the Eligible Customer.
- e) This Clause 6.8 survives expiry or termination of any contract that forms between the Supplier and the Eligible Customer in connection with the RFQ Process.

## **7 Further information and investigations**

### **7.1 Further information**

- a) The Eligible Customer may seek clarification, amendment and/or improvement of a Quote or require the Supplier to provide additional information concerning any part of its Quote on a case-by-case basis, but is under no obligation to do so, and may decide not to extend such an opportunity to each Supplier.
- b) The Supplier must respond to a request in accordance with Clause 7.1(a) within 5 days of the date of the Eligible Customer's request.
- c) Without limiting Clause 7.1(a), the Supplier must, if requested by the Eligible Customer, give a presentation in relation to the Quote at a time and place specified by the Eligible Customer.

## **7.2 Investigations**

- a) The Eligible Customer may conduct, or may engage an agent to conduct, independent investigations regarding the Supplier and its Quote, including in relation to:
  - i. whether the Supplier is Pre-qualified;
  - ii. the Supplier's:
    - A. commercial structure;
    - B. financial status;
    - C. litigation, business and credit history;
    - D. prior contract compliance and performance; and
  - iii. any criminal records or pending charges of the Supplier's officers, employees, agents or contractors.
- b) By submitting a Quote, the Supplier:
  - i. consents to such investigations being conducted;
  - ii. agrees to cooperate with any investigations (including an audit of the Supplier's financial status) by the Eligible Customer and its agent; and
  - iii. consents to the Eligible Customer or its agent contacting and obtaining information about the Supplier from the Supplier and any third party that the Eligible Customer considers may be able to provide information about the Supplier which is relevant to the evaluation of its Quote.
- c) Subject to Clause 10.3, the Eligible Customer is under no obligation to provide the Supplier with details of the results of any investigation.
- d) If the Eligible Customer requests that the Supplier provide any information to the Eligible Customer under this Clause 7.2, the Supplier must provide the information to the Eligible Customer or its nominated agents within 5 days of the date of the Eligible Customer's request.
- e) Failure to provide any information to the Eligible Customer within the time specified in Clause 7.2(d), may result in the Quote being deemed a Non-conforming Quote by the Eligible Customer by notice to the Supplier.

## **8 Evaluation of Quotes**

### **8.1 Supplier to treat Quote as best and final offer**

The Supplier must treat its Quote as its best and final offer.

## **8.2 Evaluation**

- a) The Eligible Customer will evaluate Conforming Quotes (and any Non-conforming Quotes that it elects to evaluate) against the Evaluation Criteria.
- b) The evaluation of each Quote will be based primarily upon the information provided in the Quote.
- c) In addition to Clause 8.2(b), the Eligible Customer may, in its absolute discretion, in evaluating Quotes have regard to:
  - i. the Eligible Customer's and its advisors' previous experience and dealings with the Supplier;
  - ii. information received from any referee contacted by the Eligible Customer in relation to the Supplier;
  - iii. any information about the Supplier which is in the public domain, and
  - iv. any information obtained pursuant to investigations carried out in accordance with Clause 7.2 or which comes to the attention of the Eligible Customer or its advisors.
- d) The Supplier must ensure that each Quote submitted by it addresses each of the Evaluation Criteria.

## **8.3 Negotiations**

- a) The Eligible Customer reserves the right to enter into negotiations with the Supplier regarding any aspect of its Quote(s), but is under no obligation to do so, and the Eligible Customer has no obligation to extend the opportunity to negotiate to the Supplier.
- b) The objective of negotiations will be to agree all commercial issues, including price, and completely settle the terms of the RFQ Response Form submitted by the Supplier and the Contract Conditions prior to the acceptance of a successful Quote. Any amendments arising from such negotiations will be documented in, or attached to, the Letter of Acceptance.
- c) If the Eligible Customer wishes to enter into negotiations with the Supplier, the Eligible Customer may do one or more of the following:
  - i. issue the Supplier with a program and timetable for negotiations together with:
    - A. redrafts of the Contract Conditions; and
    - B. the Eligible Customer's comments on the Contract Conditions submitted by the Supplier;

- ii. meet and negotiate with the Supplier; and
- iii. require the Supplier to:
  - A. comply with the Eligible Customer's program, timetable, location and format for negotiations; and
  - B. meet and negotiate in good faith with the Eligible Customer to endeavour to completely settle the terms of the Contract Conditions.
- d) Unless otherwise stated, the Eligible Customer entering into negotiations with any Supplier does not amount to a rejection of the Supplier's Quote, or the making of a counter offer to the Supplier.
- e) The Eligible Customer may, at any time, discontinue negotiations with the Supplier and exercise any of its other rights under this Request for Quote.

## **9 Variations to Quotes**

- a) The Supplier must not vary its Quote unless invited to do so by the Eligible Customer.
- b) The Eligible Customer may:
  - i. invite the Supplier to vary its Quote but has no obligation to do so and need not extend the same opportunity to each Supplier; and
  - ii. accept or reject a variation to a Quote in its absolute discretion.
- c) Any variations to a Quote which are invited by the Eligible Customer (including as a result of a request for clarification, improvement or additional information in accordance with Clause 7.1 or as a result of negotiations) that are documented in writing and accepted by the Eligible Customer, will form part of the Quote.

## **10 Acceptance and formation of contract**

### ***10.1 Acceptance of offers***

Without limiting any other term of this Request for Quote, the Eligible Customer:

- a) may withdraw this Request for Quote at any time prior to a Contract forming between it and the successful Supplier;
- b) is not bound to accept the lowest price submitted by an IBCP Supplier;

- c) may (but is not obliged to) consider any Quote which is a Non-conforming Quote; and
- d) may invite the Supplier to change its Quote or Non-conforming Quote in response to a change to the terms of the Request for Quote documents or a change to the RFQ Process or in the process of negotiating for the award of the Contract Conditions.

### ***10.2 Formation of contract***

Notwithstanding that the Eligible Customer may advise the Supplier that its Quote has been accepted, no contractual relationship exists or will arise between the Eligible Customer and any Supplier with respect of the relevant Services unless and until the Eligible Customer issues a Letter of Acceptance to the Supplier.

### ***10.3 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 Supplier 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 Supplier, would be of substantial concern to the Supplier, 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 Supplier in its Quote. The Eligible Customer cannot guarantee that any information provided by the Supplier will be protected from disclosure under the RTI Act.
- e) The Supplier 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 Eligible Customer accepts no responsibility for the accuracy or adequacy of any information it provides to the Supplier concerning the content or effect of the RTI Act.
- g) The Eligible Customer reserves the right to disclose, by publication by means of media of its choosing, upon award of any contract details, the name and address of the successful Supplier, a description of the relevant goods, services or goods and services, the commencement date of the awarded contract and its price or value.

#### **10.4 Information privacy**

- a) The Eligible Customer is bound by the provisions of the *Information Privacy Act*.
- b) If the Supplier collects or has access to Personal Information as a result of this Quote, the Supplier must:
  - i. if the Eligible Customer is an 'agency' within the meaning of the *Information Privacy Act*, comply with Parts 1 and 2 of Chapter 2 and Section 41 of the *Information Privacy Act* in relation to the discharge of its obligations under the Quote as if the Supplier was the Eligible Customer;
  - ii. not use Personal Information other than in connection with carrying out work under the Quote, unless required or authorised by law;
  - iii. not disclose, or transfer outside of Australia, Personal Information without the prior written consent of the Eligible Customer, unless required or authorised by law;
  - iv. ensure that its officers, employees, agents and subcontractors do not access, use, or disclose Personal Information other than in connection with carrying out work under the Quote;
  - v. ensure that its subcontractors who have access to Personal Information comply with obligations the same as those imposed on the Supplier under this clause, including obtaining from its employees, officers, agents or subcontractors, an executed deed of privacy in a form acceptable to the Eligible Customer;
  - vi. fully co-operate with the Supplier to enable the Supplier to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints;
  - vii. comply with other such privacy and security measures as the Eligible Customer may reasonably require from time to time;

- viii. comply with the reasonable directions of the Eligible Customer in relation to any privacy breach referred to in Clause 10.4; and
  - ix. fully co-operate with the Eligible Customer to enable the Eligible Customer to take any action required of it under chapter 3A (Mandatory notification of data breaches) of the *Information Privacy Act*.
- c) By submitting a Quote, the Supplier warrants that it has obtained the consent of each individual whose Personal Information is included in the Quote for the:
- i. inclusion of their Personal Information in the Quote
  - ii. use of the Personal Information by the Eligible Customer for the purpose of evaluating and awarding the Quote, and
  - iii. disclosure of the Personal Information to other parties (including professional advisors) as may be involved in assisting the Eligible Customer with the evaluation of the Quote.

The Supplier indemnifies the Eligible Customer against any claim, damage or loss (including legal costs and expenses) that the Eligible Customer may incur as a consequence of a breach by the Supplier of the warranty in Clause 10.4(c).

Any Personal Information provided by the Eligible Customer to the Supplier must be handled by the Supplier in accordance with the *Information Privacy Act*.

- d) The Supplier must immediately notify the Eligible Customer upon becoming aware of:
- i. any breach of this Clause 10.4;
  - ii. any unauthorised access, use, modification, disclosure or other misuse of any Personal Information collected or accessed in connection with the Contract;
  - iii. any loss of Personal Information collected or accessed in connection with the Contract in circumstances where unauthorised access, use, modification, disclosure or other misuse of the Personal Information by a third party is likely to occur; or
  - iv. anything that would constitute an eligible data breach (as defined in the *Information Privacy Act*) relating to the Personal Information collected or accessed in connection with the Contract.
- e) This Clause 10.4 survives expiry or termination of any Contract that may form between the Supplier and the Eligible Customer during the RFQ Process.

- f) The Supplier acknowledges that, in accordance with the Quote, the Superintendent, the Eligible Customer and the QGP Compliance Branch:
  - i. will collect information for the purposes of administering the Quote that may contain Personal Information which will be used in accordance with the Quote and may be disclosed to the Superintendent, the Eligible Customer, the QGP Compliance Branch and agents, consultants, or other contractors engaged by the Eligible Customer, but will not be disclosed to any other third party without the Supplier's consent unless authorised or required by law or the Quote; and
  - ii. Personal Information will be handled in accordance with the Information Privacy Act; and
  - iii. This clause will survive the termination or expiry of the Contract.

## **11 Eligible Customer Confidential Information**

### ***11.1 Duty of confidentiality***

The Supplier must:

- a) keep confidential and not disclose to any third party any Eligible Customer Confidential Information; and
- b) not disclose, or allow to be disclosed, any Eligible Customer Confidential Information to any person except:
  - i. as required by Law or by the rules of a relevant stock exchange;
  - ii. with the prior written consent of the Eligible Customer; or
  - iii. to an Associate of the Supplier if, and to the extent that, the Associate needs to know the information for the Supplier to participate in the RFQ Process.

### ***11.2 Use of the Eligible Customer Confidential information***

The Supplier must ensure that all the Eligible Customer Confidential Information in the possession or control of the Supplier or any of its Associates is only used for the purpose of the Supplier participating in the RFQ Process and is not used for any other purpose whatsoever.

### ***11.3 Cyber Security Risk Management***

The Supplier must, at its own cost and expense:

- a) maintain effective cyber and information security measures to protect all information (including the Eligible Customer Confidential Information) from unauthorised access, modification, use, copying, loss or disclosure;

- b) promptly notify the Eligible Customer in writing if the Supplier 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 Eligible Customer in connection with any action or investigation regarding any Data Breach, and provide any information reasonably requested by the Eligible Customer in connection with the Data Breach.

#### **11.4 Disclosure required by law**

- a) Subject to Clause 11.4(b), if the Supplier is required by Law or by the rules of a relevant stock exchange to disclose any Eligible Customer Confidential Information, the Supplier must:
  - i. first, to the extent practicable, give reasonable notice to and consult with the Eligible Customer as to the form and content of the disclosure;
  - ii. disclose only the minimum amount of the Eligible Customer Confidential Information required to comply with the relevant law or stock exchange requirement; and
  - iii. do whatever is necessary to ensure that the disclosed Eligible Customer Confidential Information is treated confidentially.
- b) The Supplier acknowledges and agrees that the Eligible Customer may publish information relating to this Request for Quote and the Contract Conditions without the Eligible Customer complying with any similar requirements to those in Clause 11.4(a).

#### **11.5 Disclosure to Associates**

- a) The Supplier must:
  - i. inform each of its Associates to whom the Eligible Customer Confidential Information is disclosed of the Supplier's obligations under this Clause 11;
  - ii. procure that each of its Associates to whom the Eligible Customer Confidential Information is disclosed strictly observes all of the Supplier's obligations under this Clause 11 as if these obligations were imposed directly on that Associate; and
  - iii. ensure that no Associate to whom the Eligible Customer Confidential Information is disclosed does anything which, if done by the Supplier, would breach this Clause 11.

- b) The Supplier is liable to the Eligible Customer for any breaches of the Supplier's obligations under this Clause 11 by its Associates.

### **11.6 Return or destruction**

If requested by the Eligible Customer, the Supplier must immediately return to the Eligible Customer (or if the Eligible Customer requests, destroy) all materials containing any the Eligible Customer Confidential Information in the Supplier's (or any of its Associates') possession or control.

### **11.7 Survival**

This Clause 11 survives expiry or termination of any contract that forms between the Supplier and the Eligible Customer in connection with the RFQ Process.

## **12 Confidential information of Supplier**

- a) The Supplier may notify the Eligible Customer of documents or information that the Supplier considers to be confidential information of the Supplier and may request to the Eligible Customer that such documents or information not be published or disclosed.
- b) The Eligible Customer will consider any request from the Supplier under Clause 12(a) but has no obligation not to publish or disclose any document or information referred to it under Clause 12(a).
- c) Where the Eligible Customer has previously informed the Supplier that information or documentation notified to the Eligible Customer under Clause 12(a) will not be published or disclosed, the Eligible Customer may at any time amend or alter its decision by notice to the Supplier.
- d) The Supplier acknowledges and agrees that the Eligible Customer may have an obligation to publish information relating to this Request for Quote and a Contract without the consent of the Supplier.

## **13 General**

### **13.1 Eligible Customer's discretion**

Unless expressly provided otherwise, any right, power or privilege of the Eligible Customer under this Request for Quote and in relation to the RFQ Process may be exercised by the Eligible Customer:

- a) in its absolute discretion;
- b) without giving reasons; and

- c) without reference to the Supplier.

### **13.2 No advertising**

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

### **13.3 Governing law and jurisdiction**

- a) This document is governed by and is 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.

### **13.4 Severability**

- a) Subject to Clause 13.4(b), if any provision or term of this Request for Quote 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 this Request for Quote.
- b) Clause 13.4(a) does not apply if severing the provision:
  - i. materially alters the:
    - scope and nature of this Request for Quote; or
    - the relative commercial or financial positions of the parties; or
  - ii. would be contrary to public policy.

### **13.5 Waiver and exercise of rights**

- a) A single or partial exercise or waiver by a party of a right relating to this Request for Quote 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.

