

# Request for Quote - ICT

## Terms and Conditions of Offer

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## 1. INTRODUCTION

### 1.1 Request for Quote

This Request for Quote (RFQ) invites Offers to the State of Queensland acting through the Department of Transport and Main Roads (also referred to in this RFQ as “TMR” and “Customer”) from suitably qualified suppliers of the Products and Services as set out in Part A – Request For Quote and who can reasonably expect to meet the requirements set out Section 1 – Requirements of Part A.

### 1.2 RFQ Documentation

- (a) This RFQ is made up of the following parts:
  - (i) Part A – Request for Quote;
  - (ii) Part B – Terms and Conditions of Offer (this document); and
  - (iii) Part C – Draft Customer Contract.
- (b) Offerors should make themselves familiar with all parts of this RFQ as set out in clause (a) above.
- (c) A reference to this RFQ shall include reference to all parts of the RFQ.

### 1.3 Interpretations

- (a) The following rules of construction shall be used in the interpretation of this RFQ:
  - (i) Headings are for convenience only and do not affect interpretation;
  - (ii) "Includes" in any form is not a word of limitation;
  - (iii) Words implying the singular include the plural (and vice versa) and words implying a gender include any other gender;
  - (iv) All dates and times in this RFQ are Australian Eastern Standard Time (AEST) (GMT +10 hours).
  - (v) All dollar values are expressed in Australian dollars;
  - (vi) Any reference to any legislation includes any subordinate legislation made under it and any legislation amending consolidating or replacing it;
  - (vii) A reference to an entity or person includes an individual, corporation, partnership or other legal entity;
  - (viii) A party includes its executors, administrators, liquidators, successors and permitted assigns;
  - (ix) If any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;
  - (x) An annexure or appendix forms part of the document to which it is attached; and
  - (xi) In the event of any inconsistency between any parts of this RFQ provided as individual MSWord documents (provided to facilitate response to this RFQ) and the complete RFQ provided as a PDF document, the PDF document is considered the master document and shall prevail.

- (b) In the interpretation of this RFQ, no rule of construction applies to the disadvantage of the Customer on the basis that the Customer (or its representative), put forward and / or drafted this RFQ or any provision in it.

### 1.4 QTender

- (a) Where submission through QTender is required as per *Section 1 – Requirements of Part A – Request for Proposal* of this RFQ, organisations preparing or considering submitting an Offer are recommended to register for this RFQ on the Queensland Government QTender website at <https://secure.publicworks.qld.gov.au/etender/index.do> to ensure that they receive all the relevant and required documentation, including any clarifications or other notices that may be issued during the tender open period.
- (b) It is the responsibility of organisations preparing or considering submitting an Offer to regularly check the eTender website for any changes to the RFQ prior to the Offer Closing Date. The Customer accepts no responsibility for Offerors not being aware of any changes to the RFQ that are notified to the market.

### 1.5 Timetable

- (a) The Customer intends to conduct the RFQ process in accordance with the timetable set out in *Section 1 – Requirements of Part A – Request for Quote* of this RFQ.
- (b) The dates and timelines may be amended by the Customer at any time during this RFQ process at the Customer's sole discretion. The Customer intends to notify registered RFQ recipients via the Queensland Government eTender website at <https://secure.publicworks.qld.gov.au/etender/index.do> or through the contact email address as per *Section 1 – Requirements of Part A – Request for Proposal* of this RFQ.

## 2. COMMUNICATION

### 2.1 Communication Protocol

- (a) All enquiries regarding the Offer documents should be directed to the RFQ Contact Officer, the details for which are set out in *Section 1 – Requirements of Part A – Request for Quote* of this RFQ.
- (b) Any official communication regarding this RFQ (including clarifications of any RFQ Requirements), must be made in writing by email. Verbal or telephone (voice) enquiries must be confirmed in writing to the RFQ Contact Officer only.
- (c) Oral advice or information given or obtained in respect of this RFQ will not constitute a warranty or representation to any prospective Offeror and will not be binding on the Customer. The Customer will be bound only by advice or information furnished to the Offeror in writing by the RFQ Contact Officer or their delegate.
- (d) Other than using the communication protocol described above, approaches by Offerors to members of TMR attempting to solicit information or influence this RFQ process in any way shall be reported to the Project Manager who, after consulting the Probity Auditor and evaluation team, may set aside any Offer received from the offending Offeror.

- (e) The Offeror agrees to be bound by the terms contained in this RFQ, including the requirement not to communicate with any media outlets on matters concerning this RFQ without the prior written permission of the Customer.

### 2.2 Clarifications and Information

#### RFQ Open Period

- (a) The Customer will, if possible, provide the information requested within one (1) Business Day of receipt of the request, or agree a date by which the information will be provided.
- (b) Where a request for information is made within one (1) Business Day from the “Offer Closing Date” of this RFQ, the Customer cannot guarantee to respond to the request prior to the “Offer Closing Date”.
- (c) The questions raised and any answers provided will not be considered confidential and may, at the Customer’s discretion, be circulated to other prospective Offerors that have registered an interest in lodging an Offer.
- (d) Where, in the opinion of the Customer, the information provided could have an effect on other prospective Offerors, such information shall be given forthwith in writing to all known prospective Offerors.
- (e) If questions and answers are circulated to other prospective Offerors, the Customer will not divulge the name of the party that raised the query without the prior consent of that party.

#### RFQ Evaluation Period

- (a) The Customer may request information (clarification) from an Offeror on any point of doubt in their Offer document.
- (b) The Offeror(s) shall, within one (1) Business Day of receipt of the clarification request, acknowledge receipt of the clarification request or other information provided by the Customer.
- (c) The Offeror shall provide the required information within two (2) Business Days of receipt of the clarification, or agree with the RFQ Contact Officer a date by which the information will be provided.

## 3. RESPONDING TO THE RFQ

### 3.1 General Information Regarding Responding to Requirements Specification

- (a) The Customer encourages Offerors to provide concise statements and professionally presented documentation.
- (b) Offerors must respond to each of the requirements detailed in Section 1 – Requirements of Part A – Request for Quote of this RFQ in the response fields provided in Section 2 – Offeror Response of Part A – Request for Quote.
- (c) The responses to Section 2 – Offeror Response will be considered as part of the evaluation process.

## Part B – Terms and Conditions of Offer

- (d) Failure to complete all response fields included in Section 2 – Offeror Response may result in the Offer being classified as non-conforming at the discretion of the Customer, and may result in the Offer being set aside following consultation with the Probity Advisor.
- (e) Incomplete or missing information may result in the Offer receiving a low score for any evaluation element requiring such information.
- (f) Offerors must ensure that formatting, font, numbering and headings are not altered in any way unless consent has been first granted by the Customer.
- (g) The Offeror shall be bound by their responses to this RFQ (their Offer).

### 3.2 Format of Offers for submission

- (a) The structure of the RFQ is set out in clause 1.2 of this Part B – Terms and Conditions of Offer.
- (b) This RFQ seeks a response in the form of a completed Section 2 – Offeror Response with optional attachments, and completed pricing tables provided by the Offeror.
- (c) As part of their Offer, the successful Offeror will be asked for their willingness to enter into a GITC Customer Contract based on Part C – Draft Customer Contract of this RFQ.
- (d) The following matrix summarises the use of documentation throughout this RFQ process:

Document Title	RFQ	Offer	GITC Customer Contract
Part A – Request for Quote	✓	✓	Partial
Part B – Terms and Conditions of Offer (this document)	✓	✓	
Part C – Draft Customer Contract	✓	✓	✓

### 3.3 Part Offers

The Customer will not accept part Offers.

### 3.4 Alternative/Innovative Offers

- (a) Offerors may submit an alternative proposal if it is clearly identified as an “Alternative Offer” wherever it fails to comply with the specified Requirements.
- (b) Each Alternative Offer must be completed and submitted separately in accordance with the full Requirements of this RFQ.
- (c) The Customer reserves the right either to consider Alternative Offers on their merits or not to consider them further.
- (d) An Offeror who submits an Offer which meets the Customer’s Requirements in an alternative and practical manner, taking into account the totality of the Requirements Specification, must include any supplementary material, together with associated prices, which demonstrates, in detail, that the alternative will fully achieve all the Requirements.

- (e) Offerors are encouraged to offer options or solutions which, in a novel or innovative way, contribute to the Customer's ability to carry out its business in a more cost-effective manner. These may be related to the functional, performance and technical aspects of the Requirements or to opportunities for more advantageous commercial arrangements. These options will be considered commercial in confidence.

### 3.5 Consortia or Joint Offers

- (a) The Customer will not accept Offers from a consortia or joint partnership for this RFQ.
- (b) Despite any other terms in this RFQ, including clauses 3.9 and 7.8 of this Part B – Terms and Conditions, recipients of this RFQ and Offerors are permitted to use information and disclose information to other recipients, Offerors or other parties for the purpose of exploring or preparing an Offer in response to this RFQ, provided that such persons are aware of the terms in this RFQ.

### 3.6 Competitive Neutrality

Offers submitted by a government owned business, a local government or a State or Commonwealth agency or authority shall be priced to comply with the competitive neutrality policy of their respective jurisdiction.

### 3.7 Non-Conforming Offers

- (a) The Customer reserves the right to classify an Offer as conforming or non-conforming.
- (b) The Customer may, at its sole discretion, deem an Offer to be non-conforming including where:
  - (i) Any Mandatory Requirement is not met;
  - (ii) Clear responses to all requirements are not provided;
  - (iii) All response fields (as provided in *Section 2 – Offeror Response*) are not completed in accordance with the associated instructions;
  - (iv) The Offer Price (and all its components), is not clearly and readily identifiable or has not been provided in accordance with the Pricing Requirements in the Requirement Specifications section; or
  - (v) The Soft Copy of the Offer includes Malware or Bugs or is Corrupt.
- (c) Non-conforming Offers may be rejected at the discretion of the Customer.
- (d) The Customer is not obliged to provide reasons for non-acceptance of any non-conforming Offer.

### 3.8 Offer Costs

In receiving this RFQ, the recipient will be deemed to have acknowledged and agreed that they will bear all the expenses they incur in preparing their Offer, supporting the Customer's evaluation of the Offer and negotiating a Customer Contract, and shall not be entitled to seek any compensation or reimbursement of those costs from the Customer.

### 3.9 Confidentiality – Recipients and Offerors

- (a) In receiving this RFQ (whether directly or indirectly from the Customer) and in dealing with the Customer as a recipient or as an Offeror, the recipient of this RFQ may receive information (including, but not limited to, this RFQ) of a business, technical or scientific



nature, and intellectual property, or information about the trade or business secrets of the Customer that is commercially valuable and is confidential to the Customer (the “Customer’s Confidential Information”).

- (b) The recipient shall keep the Customer’s Confidential Information secret and confidential and shall not disclose or use any of the information, or allow any employee, agent or any other person(s) who receives or accesses the Customer’s Confidential Information through the recipient to disclose or use any of the information for any purposes other than responding to this RFQ.
- (c) The recipient may disclose the Customer’s Confidential Information to:
  - (i) The recipient’s officers, employees, agents and contractors for the purpose of responding to this RFQ; and
  - (ii) Other recipients, Offerors or parties with whom the recipient is exploring or preparing an Offer in response to this RFQ, including as a consortium, joint offer or prime contractor arrangement,
  - (iii) only to the extent necessary for the purposes of responding to this RFQ and provided that such persons are aware of the terms in this RFQ and that the Customer’s Confidential Information is to be used and disclosed only in accordance with those terms as if they were the recipient. The recipient must ensure that such persons use and disclose the information only in accordance with the terms in this RFQ.
- (d) All Intellectual Property Rights in the Customer’s Confidential Information are vested in the Customer and the recipient may only use such Intellectual Property Rights for the purpose of responding to this RFQ.
- (e) Any use by the recipient, or by any person who receives or accesses the Customer’s Confidential Information through the recipient of the Customer’s Confidential Information for purposes other than responding to this RFQ, will be deemed a breach of the conditions of this RFQ.
- (f) The obligations under this section 3.9 do not extend to information disclosed by the Customer to the recipient to the extent that:
  - (i) The recipient is required to disclose the information by law; or
  - (ii) The information is or has become public knowledge (other than through a breach of obligation of confidence by the recipient).
- (g) This clause 3.9 does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Customer’s Confidential Information.
- (h) This clause 3.9 continues to operate after this RFQ process has ended.

### 3.10 Advertising

- (a) Recipients of this RFQ and Offerors must not publish or advertise any information relating to this RFQ or the awarding of any Customer Contract or arrangement in any medium without the prior written approval of the Customer.
- (b) Should any Offeror consult with media representatives in relation to this RFQ during the RFQ period, without prior written approval of the Customer, the Customer reserves the right to set aside the relative Offer.

## 4. LODGEMENT OF OFFERS

### 4.1 Offer Closure and Late Offers

- (a) Offers shall be lodged by the Offer Closing Time on the Offer Closing Date as stated in *Section 1 – Requirements of Part A – Request for Quote*.
- (b) It is the Offerors responsibility to ensure that Offers are lodged on time.
- (c) The Customer reserves the right to amend the “Offer Closing Time” and the “Offer Closing Date” at any time during this RFQ process. Registered RFQ recipients will be advised of any such variation by email either directly or via the eTender website.
- (d) An Offer not lodged by the Offer Closing Time on the Offer Closing Date, will be considered to be a Late Offer.
- (e) Any Late Offer may not be considered at the sole discretion of the Customer.
- (f) Offers must not be lodged in any format or means other than as specified in *Section 1 – Requirements of Part A – Request for Quote*.
- (g) Offers must not be submitted to any office of the Customer other than the specified address as set out at *Section 1 – Requirements of Part A – Request for Quote*.

### 4.2 Lodgement of Offers – eTender

#### Document Identification

Offers are to be lodged electronically via eTender, such electronic Offers must be identified as “Response to” and the number and title of the RFQ.

#### Presentation of Offers

- (a) All Offers shall be submitted as one (1) soft copy in Microsoft Office 2003 application formats, for drawings in PowerPoint or Visio format, and the whole Offer in PDF format which can be printed in its entirety using Adobe Acrobat Reader version 7 or later.
- (b) The Offeror warrants that all Soft Copies are free of viruses, Malware and Bugs and is not Corrupt.
- (c) *Section 2 – Offeror Response of Part A – Request for Quote* shall be endorsed with the signature(s), position title of signatory(s), and date by the person or persons making the Offer or, if a company, signed by a duly authorised officer in accordance with the company’s Articles of Association, where ‘signature’ means:
  - (i) The scanned signature of an individual placed in a document; or
  - (ii) An individual’s name printed on the signature line of a document to act as a signature,

provided that the person(s) required to give the signature has authorised this requirement being met by using the methods mentioned in subclauses (a) or (b) of this clause (c).

#### Offer Lodgement

- (a) The Customer will only consider Offers lodged electronically through the “Lodge Tenders” process in the Queensland Government eTender web site (accessible via <https://secure.publicworks.qld.gov.au/etender/index.do> under “eTender system for government suppliers”).

- (b) If the Customer receives more than one electronically submitted Offer from an Offeror, the Offer received last in time will be deemed to be the only Offer received unless the Offers expressly state that the Offeror is submitting multiple Offers.

### Electronic Lodgement Confirmation

A separate email with no attachments must also be sent to the RFQ Contact Officer at the email address set out at *Section 1 – Requirements of Part A – Request for Quote* to notify that an Offer has been lodged.

## 5. OFFER PERIOD PROCESS

### 5.1 Best and Final Offer

- (a) Unless otherwise specified the Customer will not be engaging in a Best and Final Offer process for this RFQ.
- (b) Nothing in this RFQ restricts or prevents the Customer from negotiating with a Preferred Offeror on terms and price.

### 5.2 Questions of Clarification

During the RFQ open period, Offeror's questions of clarification will be permitted in accordance with clause 2.2 of this *Part B – Terms and Conditions of Offer*.

### 5.3 Errors, Omissions and Interpretations

- (a) Offerors identifying:
  - (i) Errors or omissions; or
  - (ii) Multiple meaning or interpretations;
- (b) Shall seek clarification through the defined process set out in section 2.2 of this *Part B – Terms and Conditions of Offer*.
- (c) If, when submitting an Offer, the Offeror still has any doubt as to the meaning of any part of this RFQ, the Offeror shall:
  - (i) Identify the uncertainty; and
  - (ii) Stipulate the interpretation of that uncertainty on which the Offer is based.

### 5.4 Opening of Offers

There will be no public opening of Offers.

### 5.5 Due Diligence

- (a) Where not requested in *Section 2 – Offeror Response*, Offerors may be required to provide additional information to the Customer during evaluation where the Customer undertakes due-diligence on the Offeror.
- (b) Where requested by the Customer, Offerors shall provide supporting information which may include details of the Offeror's ownership structure, operational arrangements, industrial relations records, litigation and legal records and the Offeror's financial records.

## **5.6 Post Offer Negotiations**

The Customer reserves the right to have post offer negotiations with preferred Offerors who have been short listed on the basis of their Offer.

## **5.7 Selection of Offers**

- (a) The Customer reserves the right to:
  - (i) Select the Offer that, in view of all circumstances, appears to be most advantageous to the Customer. Selection of the Offer does not imply that a final concluded Customer Contract has been placed; or
  - (ii) Select one Offer for the whole of its requirements; or
  - (iii) Select separate Offers for any portion of its requirements; or
  - (iv) Select one Offer, or more than one Offer, for any portion of its requirements; or
  - (v) Not select any of the Offers.
- (b) Selection of an Offer does not imply that a final concluded Customer Contract has been or will be entered into. Selection of an Offer only indicates an invitation by the Customer to negotiate a Customer Contract in accordance with the terms and conditions of this RFQ.
- (c) The Customer is not obliged to enter into negotiations with any Offeror and may terminate negotiations at any time if the Customer and shortlisted Offeror(s) are unable to negotiate the delivery of a Customer Contract that is acceptable to the Customer, or at its absolute discretion and without providing reasons.
- (d) In the event that the Customer and the short-listed Offeror(s) are unable to negotiate the delivery of a Customer Contract acceptable to the Customer, or at its absolute discretion and without providing reasons, the Customer reserves the right to enter into negotiations with other Offerors, or not accept any Offers and not proceed with the Customer Contract.
- (e) Debriefing
- (f) All Offerors whether successful or unsuccessful may seek feedback from the Contact Officer at the following execution of a Customer Contract with the successful Offeror, or if the RFQ process is stopped for any reason.
- (g) A feedback or debriefing session is an opportunity to provide the successful or unsuccessful Offeror with information that may assist the Offeror to improve any future offers submitted to the Customer. The feedback or debriefing session is not an opportunity to discuss the outcome of the evaluation of Offers to the ICT Invitation nor the relative merits of any other Offer submitted.
- (h) The Customer will not enter into any correspondence, oral or written, about its selection decisions.

## 6. EVALUATION PROCESS AND CRITERIA

### 6.1 Evaluation Process and Criteria

- (a) The evaluation of the Offers will be conducted through the application of evaluation criteria that takes into account the Requirements set out in *Section 1 - Requirements*, the strengths and weaknesses of the Offers, and the whole of life cost of the Offers.
- (b) The Offer evaluation process will involve an assessment of conforming Offers, and any non-conforming Offers the Customer may choose to consider.
- (c) The Customer reserves the right to short list Offerors during the evaluation process using the evaluation criteria specified in *Section 1 – Requirements of Part A – Request for Quote* of this RFQ.
- (d) At the Customer's sole discretion the evaluation process may also involve but is not limited to, discussions with Offerors, product assessment, reference checks, credit checks, company searches, sites visits, Offeror and due diligence checks.
- (e) The evaluation criteria as specified in *Section 1 – Requirements of Part A – Request for Quote* of this RFQ have been weighted according to importance to the Customer.
- (f) The Customer has assigned weightings prior to the release of this RFQ.

### 6.2 SME Participation Score

- (a) The evaluation of the Offers may (depending on the value of Offers received), include the SME Participation Score, calculated in accordance with the SME Participation Scheme. Further details of the SME Participation Scheme can be found at:  
<http://ict.industry.qld.gov.au/industry-support/244.htm>;
- (b) The SME participation Scheme will be applied to Offers during evaluation based on the prescribed requirements of Information Standard 13.

### 6.3 Value Added Services

- (a) Offerors are advised that the assessment of Offers to this RFQ will be based on a value for money analysis. Offerors are encouraged to provide details of any value added services, or services which exceed the Customer's Requirements particularly if these can be provided at no additional price, little price or will be of little cost to the Customer.
- (b) Offerors are however advised that careful consideration needs to be given prior to providing any value added services particularly if there is an adverse impact on the pricing of the Offer, due to the fact that the analysis of this RFQ will maintain a cognisance of both the quality of the solution offered and the relative total cost of the solution offered.
- (c) Where Offerors wish to bring a clear value added service for a particular requirement to the attention of the Customer this value added service should be detailed in a separate Attachment referred to from the relevant response field.

### 6.4 Offeror Evaluation Activities

- (a) During the evaluation process, the Offeror may be required to undertake any or all of the activities set out in this clause 6.4.

- (b) **Clarifying Questions:** The Customer may issue questions to the Offeror seeking clarification of their Offer. Both the questions and the Offeror's responses shall be in writing and will be regarded as forming part of the Offer. All such communications shall be conducted in accordance with section 2 of this *Part B – Terms and Conditions of Offer*.
- (c) **Provision of Assessment Products:** Short-listed Offerors may, if deemed necessary by the evaluation team, be required to provide a fully functional sample of their proposed Product(s). Where required to provide sample Product(s) for assessment, Offerors shall also provide, at no charge to the Customer, a reactive technical support function to respond to questions raised during the testing of their Product(s) by the evaluation team.
- (d) **Presentations:** Short-listed Offerors may, if deemed necessary by the evaluation team, be required to make a presentation demonstrating the capability of the Offered solution to meet the requirements of the RFQ, and/or to discuss any issues that may have become apparent from the evaluation. In this case:
  - (i) The presentations shall be held at the Customer's offices in Brisbane. Interstate or International Offerors unable to attend Brisbane personally may conduct such presentations using videoconference, teleconference or other remote access technologies agreed in advance with the Customer;
  - (ii) The Customer shall contact the Offerors to advise the desired agenda, date and time for their presentation at least four (4) Business Days before the presentation is required; and
  - (iii) All costs associated with the Offeror's participation in the presentation shall be borne by the Offeror.
- (e) **Site Visits:** Short-listed Offerors may, if deemed necessary by the evaluation team, be required to arrange an escorted visit to the Offeror's Site and presentation of the Offeror's facilities in relation to the Offer.
- (f) **Referee Contact:** The Customer's evaluation team may contact referees without further reference to the Offeror. The Customer may require the Offeror's assistance in the provision of alternate or additional referees.

## 7. CONDITIONS OF OFFER

### 7.1 Validity Period

- (a) Offers (including prices) shall remain valid for the Validity Period set out in *Section 1 – Requirements of Part A – Request for Proposal* of the RFQ.
- (b) Where the Customer requires an extension of the Validity Period the Customer will request a revised Validity Period from the Offeror in writing.
- (c) The Offeror shall accept or reject the revised Validity Period in writing in accordance with section 2 of this *Part B – Terms and Conditions of Offer*.

### 7.2 Withdrawal of Offer

Any early Offer may be withdrawn by the Offeror at any time prior to the Offer Closing Date and Time by written notice to the Customer.

### 7.3 Offer Document Ownership

By submitting an Offer, the Offeror acknowledges that:

- (a) The Customer is authorised to reproduce any part of the Offer documentation for evaluation purposes; and
- (b) The Offer, complete with all supporting documents, shall remain the property of the Customer.

### 7.4 Customer's Rights

- (a) The Customer reserves the right to amend, vary or delete any Requirement, term or condition of this RFQ at any time prior to the Offer Closing Date.
- (b) Offerors will be advised, in writing, of any such variations prior to the Offer Closing Date and in accordance with the communications protocol set out in clause 2.1 and 2.2 of this Part B – Terms and Conditions.
- (c) The Customer may cancel or vary the RFQ process at any time, whether before, on, or after the Closing Date for Offers.
- (d) The Customer reserves the right not to enter into contractual arrangements, in part or in full, with any Offeror for any Products or Services referenced or implied in this RFQ.
- (e) The Customer may choose at any time not to continue with this RFQ process. Such a decision may be as a result of changes in Departmental or Government policy.
- (f) The conduct of this RFQ process is not intended to give rise to any legal or equitable relationship between the Customer and any Offerors or other Parties, other than in clause 7.8 of this Part B – Terms and Conditions.
- (g) The Customer is not committed contractually in any way to any person, company, agent, body or other entity that may receive this RFQ or that submits an Offer.

### 7.5 Offer Costs

In submitting an Offer, the Offeror will be deemed to have acknowledged and agreed that it will bear all the expenses it incurs in preparing its Offer, supporting the Customer's evaluation of the Offer and, if invited, negotiating a Customer Contract, and shall not be entitled to seek any compensation or reimbursement of those costs from the Customer.

### 7.6 Risk

Response to this RFQ is at the sole risk of the Offeror. The Customer (to the extent permitted by law) accepts no liability in contract, tort or common law or otherwise for any loss or damage suffered by the Offeror arising from, or as a direct or indirect result of, responding to this RFQ.

### 7.7 Offeror Acknowledgement

- (a) By lodging an Offer in the manner specified in this RFQ, the Offeror acknowledges that such an Offer will constitute an unconditional and binding offer by the Offeror to supply the Products and Services for the price stated in the Offer.
- (b) The Offeror acknowledges that the specified terms and conditions contained in this RFQ document and all prices, dates and other data contained in the Offer submitted

## Part B – Terms and Conditions of Offer

will form part of, and apply to, any arrangement or Customer Contract that might arise between the Customer and the Offeror unless amended by negotiation.

- (c) The Offeror acknowledges that any changes as a result of contract negotiations to the terms, conditions, specifications, prices, dates and other data contained in the RFQ and the Offer do not constitute or give rise to the right to change other parts of their Offer unless by written agreement between the Customer and the Offeror.
- (d) By responding to this RFQ, an Offeror acknowledges that they have:
  - (i) Read and understood all documentation that forms this RFQ;
  - (ii) Not relied on hearsay or any other representation (verbal, written or gesture) made by persons other than persons employed by the Customer who are authorised to make such representation;
  - (iii) Not relied on any representations made by a representative of the Customer, except where such representation is made in accordance with this RFQ;
  - (iv) Exercised all options under the instructions and Requirements Specification of this RFQ to gain a concise and full understanding of any background information and RFQ Requirements; and
  - (v) Satisfied itself as to the sufficiency and accuracy of this RFQ in order to submit a complying response and to fulfil the Requirements of any subsequent Customer Contract.
- (e) The Offeror acknowledges that the Customer reserves the right NOT to accept or negotiate any contractual conditions should the Offeror fail to disclose in their Offer full details of:
  - (i) Each and every aspect of non-compliance with the terms and conditions of this RFQ (including in particular *Part C – Draft Customer Contract* of this RFQ);
  - (vi) Any variations to the terms and conditions of this RFQ (including in particular *Part C – Draft Customer Contract*) the Offeror wishes to propose; and
  - (vii) Any additional conditions the Offeror wishes to propose.
- (f) The Offeror acknowledges that all statistical data, monetary values (including budget or expenditure figures), volumes or amounts (including for example number of staff or licenses), if any, provided in this RFQ is based on data and information available at the time of constructing this RFQ and the Customer does not guarantee that this information necessarily reflects values, volumes or trends that will occur in the future and is not to be construed as a guarantee for providing any volume of sales under subsequent arrangement(s) entered into with the Customer.
- (g) The Offeror acknowledges that, while the Customer has taken care in the preparation of this RFQ, the Customer does not warrant that this RFQ is error free. An Offeror assumes the responsibility of informing itself of the accuracy and reliability of the information and content of this RFQ.

### 7.8 Confidentiality – Recipients and Offerors

Clause 3.9 (Confidentiality) of this *Part B – Terms and Conditions* forms part of these Conditions of Offer.

### 7.9 Confidentiality – the Customer

- (a) The Customer will regard all information submitted by Offerors marked “Commercial and in Confidence” and not known by the Customer to be public knowledge as



confidential and will take reasonable steps to safeguard the confidentiality of that information. However, in view of the *Right to Information Act 2009* (Qld) or other legislation, the Customer cannot guarantee the confidentiality of all information in the Offers (see also clause 7.10 of this *Part B – Terms and Conditions*).

- (b) The obligations under this clause 7.9 do not extend to information disclosed by the Offeror to the Customer to the extent that:
  - (i) The Customer is required to disclose the information by law; or
  - (ii) The information is or has become public knowledge (other than through a breach of obligation of confidence by the Customer).

### 7.10 Right to Information Act

- (a) The *Right to Information Act 2009* (Qld) (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 public interest.
- (c) Information contained in an Offer is potentially subject to disclosure to third parties.
- (d) Offerors acknowledge that the Customer is authorised by law to disclose information under the RTI Act in the following circumstances:
  - (i) In accordance with the Customer’s publication scheme made under the RTI Act insofar as that scheme provides for the disclosure of the information;
  - (ii) When the Director-General of the Customer or their authorised delegate decides that access be given to documents containing the information to a person who has formally applied for access to those documents under the RTI Act; or
  - (iii) By publication on the Customer’s disclosure log insofar as a member of the public has been given access to documents containing the information in circumstances where the Customer is required by law to disclose the information.
- (e) If disclosure of its or any part of its Offer would be of substantial concern to an Offeror, documents forming the Offer should be stamped “Commercial-in-Confidence”. In such cases, the Customer shall use its reasonable endeavours to formally consult with and obtain the views of the Offeror before any disclosure under the RTI Act.
- (f) The Customer cannot guarantee that any information provided by the Offeror, including information that is identified by the Offeror as per clause (e) of this *Part B – Terms and Conditions* will be protected from disclosure under the RTI Act.
- (g) Despite any other provision of this RFQ, the Customer is entitled to publish on the Queensland Government Chief Procurement Office website: <https://secure.publicworks.qld.gov.au/etender/index.do> under “eTender system for government suppliers”, or by any other means, the following details:
  - (i) The name and address of the Customer;
  - (ii) A description of the Products and / or Services;
  - (iii) ICT arrangement commencement date or award date;
  - (iv) Contract value;
  - (v) Name and address of the Successful Offeror; and

- (vi) Procurement method used.
- (h) Any proposed variation by the Offeror to clause (g) of this *Part B – Terms and Conditions* which takes away or reduces the entitlements that would otherwise be provided to the Customer under that clause will be null and void.
- (i) For more information regarding the RTI Act, please contact the advertising officer as set out in *Section 1 – Requirements of Part A – RFQ Overview* of this RFQ or:  
Manager, Right to Information and Privacy  
Department of Transport and Main Roads  
GPO Box 1549, Brisbane QLD 4001  
[contactrti@tmr.qld.gov.au](mailto:contactrti@tmr.qld.gov.au)

### 7.11 Commissions and Incentives

An Offer will not be considered by the Customer if the Offeror, or a representative of the Offeror, gives or offers anything to any employee or agent of the Customer as an inducement or reward, which could in any way tend to influence, or be perceived as attempting to influence, the actions of that employee or agent in relation to the Offer. For the purposes of this clause, 'agent' includes the parent, spouse, child or associate of the employee or agent.

### 7.12 Conflict of Interests

The Offeror warrants that, to the best of its knowledge, as at the date of the Offer, neither the Offeror nor any of its officers, employees, agents and/or subcontractors have, or are likely to have, any Conflict of Interest in any matters connected with this RFQ, except as expressly disclosed to the Customer in their Offer.

### 7.13 Collusion

- (a) In submitting its Offer, the Offeror warrants to the Customer that, except as expressly disclosed in its Offer:
  - (i) The Offer was not prepared with any consultation, communication, contract, arrangement or understanding with any competitor (including any other Offeror) regarding:
    - (A) Prices;
    - (B) Methods, factors or formulas used to calculate prices;
    - (C) The intention or decision to submit or not to submit an offer;
    - (D) The submission of an offer that is non conforming;
    - (E) The quality, quantity, specifications or delivery particulars of products and/or services (including the Products and/or Services) to which the RFQ or Offer relates; or
    - (F) The terms of its Offer or a competitor's offer;
  - (ii) It has not (and will not during the RFQ process):
    - (A) Provided any benefit (including money) directly or indirectly to, or entered into any contract, arrangement or understanding to provide any benefit (including money) directly or indirectly to any competitor (including any other Offeror) relating in any way to the RFQ or Offer;
    - (B) Received any such benefit directly or indirectly, or entered into any contract, arrangement or understanding to receive any such benefit directly or indirectly from any competitor (including any other Offeror) relating in any way to the RFQ or Offer;

- (C) Consulted, communicated or entered into any contract, arrangement or understanding to provide any benefit (including money), whether directly or indirectly, to a trade, industry or other association (above the published standard fee) relating in any way to the RFQ or Offer; and
  - (D) Except for as is fully disclosed in its Offer in accordance with clause (b), the Offeror and all corporations and persons associated with the Offer, including directors and senior management, are not and have never been subject to proceedings relating to anti-competitive conduct in Australia or overseas.
- (b) The Offeror must disclose full details relating to any and all anti-competitive conduct in Australia or overseas to which the Offeror and/or any corporation or person associated with the Offer, including directors and senior management, have been subject. At a minimum, such details shall include the following and be included in their response to this RFQ:
    - (i) The names of the parties to the proceedings;
    - (ii) The case number;
    - (iii) The general nature of the proceedings; and
    - (iv) The outcome or current status of the proceedings.
  - (c) The Customer reserves the right, at its entire discretion, to exclude the Offeror from the RFQ process if the Offeror, or any corporation or person, including directors or senior managers associated with the Offer, have ever contravened any anticompetitive laws in Australia (including the *Competition and Consumer Act 2010* (Cth)) or overseas.
  - (d) Furthermore, the Customer reserves the right, at its entire discretion, to exclude the Offeror from the RFQ process if full disclosure of any or all contraventions of the anti-competitive provisions of the *Competition and Consumer Act 2010* (Cth) or equivalent laws in Australia or overseas, has not been made as is required in clauses (a)(ii) and (b) of this *Part B – Terms and Conditions of Offer*.
  - (e) In submitting its Offer, the Offeror acknowledges that if the Customer accepts the Offer and enters into a GITC Customer Contract the Customer does so in reliance of the warranties in clause (a) of this *Part B – Terms and Conditions of Offer*.

### 7.14 Complaint Management

- (a) If at any time during this RFQ process an Offeror considers that it has been unreasonably or unfairly treated and it has not been able to resolve the issue with the RFQ Contact Officer set out in *Section 1 – Requirements of Part A – RFQ Overview* of this RFQ, the Offeror should contact the Customer's Complaint Manager and ask for the matter to be dealt with in accordance with the Customer's complaint management process. Any request should be accompanied by the following:
  - (i) Dates and details of issue relevant to the dispute;
  - (ii) Parties involved;
  - (iii) Issues that require resolution;
  - (iv) Outcomes the Offeror considers appropriate for resolving any issues; and
  - (v) Offeror's contact details.
- (b) The Customer's Complaint Manager is:  
  
Chief Procurement Officer

Department of Transport and Main Roads  
GPO Box 1412  
Brisbane, Queensland 4001  
Ph: +61 7 3066 1704

## **8. PRICING OF OFFERS**

### **8.1 Pricing Terms**

- (a) All pricing forming the Offer shall be provided to the Customer in the format and in accordance with the terms and conditions set out in this RFQ.
- (b) All prices offered must be represented as exclusive of GST.
- (c) The Customer may, as part of the evaluation process, apply differing quantities in their pricing calculator to conduct sensitivity analysis.
- (d) The metrics in this RFQ and any pricing tables are provided to enable the Customer to determine pricing assessments.

## **9. TERMS OF CONTRACT**

### **9.1 Type of Contract**

- (a) In accordance with Information Standard 13 (ICT Procurement), an agency's acquisition of ICT products and services are to be made subject to the contractual terms and conditions of the Cabinet endorsed Queensland Government Information Technology Contracting (GITC) Framework v5.02 (or later).
- (b) The successful Offeror to this RFQ must be a current signatory to a Queensland Government GITC Deed of Agreement under the applicable Modules as defined within this RFQ, prior to entering into a Customer Contract. The successful Offeror must hold and maintain their GITC Agreement during the Contract Period.
- (c) Any Customer Contract established as a result of this RFQ shall be:
  - (i) Governed by Queensland GITC;
  - (ii) Structured in accordance with Queensland GITC; and
  - (iii) Constituted by the Customer's GITC General Order and applicable Module Order(s) together with the appropriate GITC Schedules, a draft of which is set out in *Part C – Draft Customer Contract* of this RFQ.
- (d) The Customer and the successful Offeror will aim to negotiate a Customer Contract (comprising a General Order with appropriate Module Orders, Schedules and Appendices), to allow the Customer to purchase the agreed Products and Services from the Contractor utilising relevant Modules of the GITC Agreement as determined by the Customer.
- (e) The Customer reserves the right to utilise additional Modules, Module Orders and Schedules of the GITC Agreement as required.
- (f) Unless explicitly stated otherwise, where the terms and conditions of GITC and this RFQ or the Customer Contract conflict, GITC provisions shall prevail, to the extent of the inconsistency.

## Part B – Terms and Conditions of Offer

- (g) All Offerors need to be aware of the terms and conditions contained within their GITC Agreement that are applicable to this Offer.
- (h) All Offerors must ensure that their GITC Agreement embodies the requisite GITC Modules that permits them to enter into a Customer Contract with the Customer for the Products and Services set out in this RFQ.
- (i) Offerors are required to review the draft Customer Contract set out in *Part C – RFQ Draft Customer Contract* and advise in the relevant response fields in *Section 2 – Offeror Response of Part A – Request for Quote of this RFQ*, that they either agree with the draft, or state clearly their proposed changes in the form of an alternate contractual clause.
- (j) All clauses in *Part C – Draft Customer Contract*, where the Offeror does not provide a proposed replacement clause, shall be deemed as accepted by the Offeror and will not be subject to further negotiations.
- (k) The Customer reserves the right to accept, reject or negotiate any such proposed additional clauses at their sole discretion.
- (l) The Customer reserves the right not to consider any terms and conditions proposed by an Offeror where those conditions vary from the Offeror's GITC Agreement.
- (m) The Customer reserves the right to reject any Offer with terms and conditions which derogate from GITC and to accept an Offer which fully complies with the GITC provisions. Any terms and conditions of an Offer which derogate from GITC terms and conditions will be considered as part of the RFQ evaluation process.
- (n) Note that evaluation of the Offer includes consideration of the volume and nature of proposed changes to the Customer Contract.
- (o) The Customer Contract shall be governed and construed in all respects in accordance with the laws of the State of Queensland.

### 9.2 Derogation from GITC

- (a) Offerors are advised that the Customer reserves the right not to consider any contract conditions proposed by an Offeror where those conditions are deemed to derogate from provisions of the Offeror's GITC Agreement.
- (b) Any proposed provisions, which are outside of the Offeror's GITC Agreement, must be clearly articulated in the Offer.
- (c) If an Offeror lodges an Offer with terms and conditions which derogate from GITC, then the Customer reserves the right to reject that Offer. Those terms and conditions which are in conflict with or are outside of the GITC terms and conditions as proposed by an Offeror will be considered accordingly during the evaluation process.
- (d) Further information regarding GITC can be obtained from the GITC website <http://www.hpw.qld.gov.au/supplydisposal/GovernmentProcurement/GITCFramework/Pages/default.aspx> .

### 9.3 Period of Contract and Date of Commencement

- (a) The intended term of contract for which the Customer seeks the provision of Products and / or Services is set out at *Section 1 – Requirements of Part A – Request for Quote of this RFQ* ("Contract Period"). The Contract Period as advised in Section 1 is an

## Part B – Terms and Conditions of Offer

expected period only, and the Customer reserves its right to amend the Contract Period at any time at its sole discretion.

- (b) Detailed clauses addressing the Contract Period are set out in *Part C – Draft Customer Contract* of this RFQ.

*{End of Part B – Terms and Conditions of Offer}*