Department of Education

Conditions of Offer

The Department of Education's Conditions of Offer apply to department issued Request for Quotes.

1 Definitions

In these Conditions of Offer, unless the context otherwise requires, the following definitions will apply:

Closing Date and Time	Means the date and time stated in the Request for Quote, or such later time as may be notified by the Customer
Conditions of Offer	Means these terms and conditions and any additional terms and conditions specified in the Request for Quote, which regulate the pre-contractual relationship between the parties.
Confidential Information	Means all information disclosed by or on behalf of the Customer, or Supplier to the other party in connection with a Request for Quote or created using that information, which is confidential in nature, is designated as confidential, or which a reasonable person receiving the information would realise is sensitive or confidential. Including: a) comprised in or relating to any Intellectual Property Rights of the Customer. b) concerning the internal management and structure, personnel, processes and policies c) commercial operations, financial arrangements or affairs of the Customer. d) that is of actual or potential commercial value to the Customer; and e) relating to the clients or suppliers of the Customer, but does not include information that: a) was already in the possession of the Supplier or potential Supplier and not subject to an obligation of confidentiality. b) is lawfully received from a third party or independently developed by the Supplier or potential Supplier; or c) is public knowledge other than through a breach of an obligation of confidentiality.
Conflict of Interest	Means having an interest, affiliation or relationship, or owing an obligation (whether personal, financial, professional or otherwise) which conflict, may reasonably have the potential to conflict, or may reasonably be perceived as

	conflicting, with the ability of the Supplier or its personnel to perform its obligations under the Contract or SOA fairly and objectively
Contract	Means an agreement between the Customer and the Supplier made on acceptance of the Supplier's Offer by the Customer, subject to applicable terms and conditions specified in the Request for Quote
Contact Officer	Means the person nominated in the Request for Quote, to be the sole point of contact for the Request for Quote process
Customer	Means the State of Queensland (represented by the Department of Education) and acting through a business unit or a state school specified in the Request for Quote
Deliverables	Means the goods, services and documentation to be provided to the Customer as described in the Requirements, and all incidental and ancillary goods, services and documentation
Government Priorities	**Aboriginal and Torres Strait Islander Business** is a business that is at least 50% owned by an Aboriginal person or a Torres Strait Islander person. **Local Supplier** is within a 250km radius of where the goods and/or services are being supplied. **Social Enterprise** generates social benefits (positive impacts) on people, places or community. **Small or Medium Enterprises (SME)** employees less than 200 employees
Offer	Means an offer submitted by a Supplier in response to the Request for Quote, including subsequent modifications
Offer Validity Period	Means the period in which the offer is open for acceptance by the Customer
Order	Means any order or acceptance of offer from the Customer for the provision of goods and/or services that are the subject of the Request for Quote
Personal Information	Has the meaning given: a) For the purpose of the *Information Privacy Act 2009 (Qld)* – in that Act; or b) For the purposes of the *Privacy Act 1988 (Cth)* – in that Act.
Request for Quote	Means the documentation issued by the Customer, seeking quotes or offers for the provision of goods and/or services
Requirements	Means the standards, specifications and other requirements for the Deliverables and the performance of the Supplier's obligations under the Contract, which are set out in the Request for Quote, or otherwise agreed by the parties
Supplier	Means a potential supplier invited to participate in the Request for Quote Process

DoE Supplier Code of Conduct	Means the Department of Education Supplier Code of Conduct and as updated and amended from time to time.

2 Lodgement of Offer

a) Offers will be received at the date and time, and at the address, specified in the Request for Quote.

b) By submitting an Offer, the Supplier:

i. accepts these Conditions of Offer; and

ii. offers to enter into a Contract with the Customer to provide the Goods, Services and/or Deliverables.

iii. acknowledges that the Customer may accept the offer during the Offer Validity Period (clause 13)

3 Customer Discretion

a) The Customer may make any changes to the Request for Quote process in its absolute discretion, by notifying the Supplier in writing.

b) Without limitation the Customer may:

i. add or change the Requirements detailed in the Request for Quote documentation;

ii. amend dates including extend the Closing Date and Time;

iii. consider or reject a quote received after the Closing Date and Time;

iv. accept non-conforming Offers, quotes in part, or multiple quotes;

v. reject any or all quotes;

vi. amend the evaluation criteria stipulated in the Request for Quote;

vii. exercise discretion in evaluating any subjective evaluation criteria;

viii. negotiate with one or more Suppliers;

ix. interview, negotiate or hold discussions with any Supplier or prospective Supplier on any matter contained (or proposed to be contained) in a Offer to the exclusion of others;

x. request some or all Suppliers to conduct site visits, provide references and additional information, and/or make themselves available for interview;

xi. change the terms and conditions applicable to the Request for Quote process, including terms of the proposed Contract; or

xii. cancel the Request for Quote process.

4 Supplier Cost

a) Participation in the Request for Quote process is at the Supplier's cost.

b) The Customer is not required to pay compensation to the Supplier in relation to the Request for Quote process in any circumstances, for any reason.

5 No Process Contract

The conduct of the Request for Quote process does not give rise to any legal or equitable relationship. A Supplier will not be entitled to claim compensation or loss from the Customer for any matter arising out of the Request for Quote process, including but not limited to any failure by the Customer to comply with these Conditions of Offer.

6 Verbal Advice

a) Verbal advice or information given or obtained in respect of the Request for Quote shall not constitute a warranty or a representation to the Supplier and shall not be binding on the Customer.

b) The Customer shall be bound only by advice or information furnished to the Supplier in writing by the Contact Officer nominated in the Request for Quote document.

7 Confidential Information, Privacy and Personal Information

7.1 Confidential Information

a) The Supplier must ensure that it and its officers, employees, agents and/or subcontractors who are in possession of Confidential Information, keep that information confidential except where disclosure of the Confidential Information is required by law or under the terms of these Conditions of Offer.

b) Upon receipt of a written request by the Customer, the Supplier (including an entity who obtains the information in the Request for Quote but does not submit an Offer), must deliver to the Customer any document in the Supplier's or potential Supplier's power, possession or control which contains Confidential Information.

7.2 Privacy and Personal Information

a) If the Supplier collects or has access to Personal Information as a result of the Request for Quote, the Supplier must:

i. comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009 (Qld)* in relation to the discharge of its obligations under the Request for Quote, as if the Supplier was the Customer.

ii. ensure that the Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse.

iii. not use Personal Information other than for the purposes of submitting an Offer, unless required or authorised by law.

iv. not disclose Personal Information without the consent of the Customer, unless required or authorised by law.

v. not transfer Personal Information outside of Australia without the consent of the Customer.

vi. ensure that access to Personal Information is restricted to those of its employees and officers who require access in order to submit an Offer in accordance with the Request for Quote.

vii. ensure that its officers and employees do not access, use or disclose Personal Information other than in submitting an Offer in accordance with the Request for Quote.

viii. ensure that its sub-contractors and agents who have access to Personal Information comply with obligations the same as those imposed on the Supplier under this clause 7.2

ix. fully co-operate with the Customer to enable the Customer to respond to applications for access to, or amendment of, a Document containing an individual's Personal Information and to privacy complaints; and

x. comply with such other privacy and security measures as the Customer reasonably advises the Supplier in writing from time to time.

xi. The Supplier must immediately notify the Customer on becoming aware of any breach of clause 7.2

8 Previous Discussions/Undertakings

On the release of a Request for Quote, any previous undertakings, representations, promises or conditions in respect of the subject matter of the Request for Quote shall not be binding on the Customer.

9 Insurances

a) In submitting its Offer, the Supplier must provide acceptable evidence of any insurances specified in the Request for Quote to cover its obligation under the Contract, which are to be maintained at the Supplier's expense.

b) If at the time of submitting its Offer, the Supplier does not have the requested insurance cover or to the specified amount, the Supplier must indicate in its Offer its willingness to obtain such insurances at its own expense and provide acceptable evidence before the Customer can finalised its evaluation of the Offer.

10 Conflict of Interest

a) An Offer that includes Customer employee(s) as key personnel or is submitted by Customer employee(s) will not be accepted.

b) Section 89 of the *Criminal Code Act 1899* makes it an offence for a person employed in the public service to acquire or hold, directly or indirectly, other than as a member of a registered joint stock company consisting of more than 20 stockholders, a private interest in a contract with a government agency where the person is employed.

c) The Supplier warrants that it will not submit an Offer which, if accepted, would result in an individual being in breach of *Section 89 of the Criminal Code Act 1899 (Qld)*

d) For the purpose of this clause 10, a Customer employee is an individual who receives or is entitled to receive salary or wages through the Customer's payroll system.

e) The Supplier warrants that to the best of its knowledge, as at the date of the Offer neither the Supplier nor any of its officers, employees, agents and/or sub-contractors have, or are likely to have, any Conflict of Interest in any matters connected with the Request for Quote process, except as expressly disclosed in the Offer.

f) The Supplier warrants that it will not, and It will ensure that its personnel do not, place themselves in a position that may give rise to a Conflict of Interest between the interest of the Customer and the Suppliers interests during the Request for Quote process and the term of any Contract subsequently enters as a result of this Request for Quote process.

g) If during the Request for Quote process period, a Conflict of Interest arises, or appears likely to arise, the Suppliers must notify the Customer immediately and take such steps to resolve or otherwise deal with the Conflict of Interest to the reasonable satisfaction of the Customer.

11 Evaluation Criteria

All Offers received will be evaluated on the following criteria:

a) Acceptance of the Mandatory Requirements specified in the Request for Quote; and

b) Unless otherwise specified in the Request for Quote, the standard evaluation criteria consisting of:

- Government Priorities
- Conformance to Requirements (specifications);
- Capability and Experience
- Value for Money (both cost and non-cost factors).

12 Acceptance of Offer

No Offer shall be deemed to be accepted by the Customer unless and until an Order has been received by the successful Supplier.

13 Validity Period of Offer

The minimum validity period of any offer submitted in relation to a Request for Quote shall be as specified in the request for Quote.

14 Schedules

a) The Supplier Response Schedule (Section 2) in the Request for Quote is to be completed by the Supplier and the particulars proposed, if accepted or negotiated, shall become part of the Contract.

b) Any supporting documentation in the Offer shall be referred to in the Supplier Response Schedule and cross referenced.

15 Contract Structure

The Supplier's attention is drawn to the fact that the Customer reserves the right, at any time during the term of any Contract established as a result of this Request for Quote process to:

a) Engage other suppliers for the supply of the Goods, Services and other deliverables the same or similar to the deliverables and

b) Enter into contracts with other suppliers for the supply of goods, services and deliverables, notwithstanding that the other suppliers did not participate in the Request for Quote process, for any reason, including if the Customer considers it is necessary or desirable to comply with government policy regarding diversity in supply chains, the achievement of social objectives or in the interest of public health and safety.

16 Right to Information and Disclosure

a) The *Right to Information Act 2009* (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 contained in an Offer is potentially subject to disclosure to third parties.

d) If disclosure under the RTI Act, and/or general disclosure of its Offer or part thereof, would be of substantial concern to a Supplier, because it would disclose trade secrets, information of commercial value, the purpose of results of research or other information of a confidential nature, this should be indicated in the Response Schedule (Section 2) in the Request for Quote. The Customer cannot guarantee that any information provided by the Supplier, including information that is identified by the Supplier in the Supplier Response Schedule will be protected from disclosure under the RTI Act.

e) Despite any other provisions of the Request for Quote process, the Customer is entitled to publish on the Queensland Government tendering website, qtenders or by any other means, the following details:

- The name and address of the Customer.
- A description of the Goods and/or Services.
- Contract commencement date or award date.
- Contract value; and
- Name and address of the successful Supplier.

f) For more detailed information about the Customer's Right to Information policy, including the Customer's publication scheme and disclosure log refer to https://qed.qld.gov.au/about-us/rti

17 Compliance

The Supplier must:

a) (**Communication**) direct all inquiries relating to the Request for Quote to the customers Contact Officer,

b) (**Laws**) comply with all Laws, including the *Disability Discrimination Act 1992 (Cth)*, the *Human Rights Act 2019 (Qld)*, *Modern Slavery Act 2018 (Cth)* and all Acts referenced in the Ethical Supplier Threshold and ensure that the Supplier's action do not cause the Customer to breach any Laws.

c) (**No Publicity**) Not make any public announcements or advertising relating to the Request for Quote Process.

d) (**Competitive neutrality**) If the Supplier is a government owned business, local government or Commonwealth State or Territory or Authority, price its Offer to comply with the competitive neutrality principles of the Suppliers jurisdiction.

e) (**Personnel**) Ensure that its personnel also comply with these requirements.

18 Warranties

18.1 Anti-competitive Conduct

The Supplier warrants that neither it, nor its personnel have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in connection with the Request for Quote process, or any actual or potential Contract with any entity for goods and services similar to the goods and services.

18.2 Criminal Organisation

The Supplier warrants that the Supplier and, to the best of its knowledge and belief having made reasonable enquiries, its personnel, have not been convicted of an offence under the Criminal Code in the *Criminal Code Act 1899 (Qld)* where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of the Criminal Code.

18.3 Accuracy of Information

The Supplier warrants that all representation, declarations, statements, information and documents made or provided by the Supplier (including its representatives) in connection with the Request for Quote process are complete, accurate, up-to-date and not misleading in any way.

18.4 Warranties are Ongoing

a) The warranties in this clause 18 are provided as at the date of the Suppliers Offer to the Request for Quote process and are on an ongoing basis until the later of;

   i. the Customer notifying the Supplier that its offer has been rejected; or

   ii. the expiry or termination of any Contract entered into pursuant to the Request for Quote Process.

b) The Supplier warrants that it will immediately notify the Customer if it becomes aware that any warranty made in this clause 18 was inaccurate, incomplete, out of date or misleading in any way when made, or becomes inaccurate, incomplete, out of date or misleading in any way, during the Request for Quote process.

18.5 Breach of Warranty

In addition to any other remedies available to it under Law or Contract, the Customer may, in its absolute discretion (but not required to), immediately disqualify a Supplier from the Request for Quote process, or terminate the Contract with the Supplier which is Subsequently entered into as a result of the Request for Quote process, where it believes the Supplier has breached any warranty in this clause.

19 Complaint Management

If at any time during the Request for Quote process a Supplier considers that it has been unreasonably or unfairly treated and it has not been able to resolve the issue with the Contact Officer, the Supplier should complete the Procurement Complaint form and forward it to Procurement and Facilities Services via procurement.PSB@qed.qld.gov.au.