

Department of Education

CONDITIONS OF OFFER

1. DEFINITIONS

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

“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 which is confidential in nature, which is designated as confidential, or which a reasonable person receiving the information would realise is sensitive or confidential, and includes information:

- (a) comprised in or relating to any Intellectual Property Rights of the Customer;
- (b) concerning the internal management and structure, personnel, processes and policies, commercial operations, financial arrangements or affairs of the Customer;
- (c) that is of actual or potential commercial value to the Customer; and
- (d) relating to the clients or suppliers of the Customer,

but does not include information that:

- (e) was already in the possession of the Offeror or potential Offeror and not subject to an obligation of confidentiality;
- (f) is lawfully received from a third party or independently developed by the Offeror or potential Offeror; or
- (g) is public knowledge other than through a breach of an obligation of confidentiality.

“Customer” means the State of Queensland or the entity 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.

“Key Personnel” means the representatives of the Offeror specified in the Request for Quote and the Offeror's response.

“Offer” means an offer submitted by an Offeror in response to the Request for Quote, including subsequent modifications.

“Offeror” means the entity that submits an Offer and in the case of a joint Offer includes each Offeror.

“Order” means any order or acknowledgement 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:

- for the purpose of the *Information Privacy Act 2009 (Qld)* – in that Act; or
- for the purposes of the *Privacy Act 1988 (Cth)* – in that Act.

“Request for Quote” means the documentation issued by the Customer, requesting Offers for the provision of Goods and/or Services.

2. LODGEMENT OF OFFER

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

2.3 By submitting an offer, the Customer:

- (a) accepts these Conditions of Offer; and
- (b) offers to enter into a Contract with the Customer to provide the Goods, Services and/or Deliverables.

3. CUSTOMER DISCRETION

3.1 The Customer may make any changes to the Request for Quote process in its absolute discretion, by notifying the Offeror including by publication on the Queensland Government QTenders website.



Without limitation the Customer may:

- (a) Add or change the requirements detailed in the Request for Quote documentation;
- (b) Amend dates including extend the Closing date and time;
- (c) Consider or reject a quote received after the Closing date and time;
- (d) Accept non-Conforming Offers, quotes in part, or multiple quotes;
- (e) Reject any or all quotes;
- (f) Amend the evaluation criteria stipulated in the Request for Quote;
- (g) Exercise discretion in evaluating any subjective evaluation criteria;
- (h) Negotiate with one or more Offeror and allow any Offeror to vary its quote;
- (i) Interview, negotiate or hold discussions with any Offeror or prospective Offeror on any matter contained (or proposed to be contained) in a Quote to the exclusion of others;
- (j) Request some or all Offerors to conduct site visits, provide references and additional information, and/or make themselves available for interview;
- (k) Change the terms and conditions applicable to the Request for Quote process, including terms of the proposed Contract; or
- (l) Cancel the Request for Quote process.

4. NO LIABILITY

- 4.1 Participation in the Request for Quote process is at the Supplier's Cost.
- 4.2 No Offeror shall be entitled to claim compensation or loss from the Customer for any matter arising out of the Request for Quote process.

5. VERBAL ADVICE

- 5.1 Verbal advice or information given or obtained in respect of the Request for Quote shall not constitute a warranty or a representation to the Offeror or prospective Offeror and shall not be binding on the Customer. The Customer shall be bound only by advice or information furnished to the Offeror in writing by the Contact Officer nominated in the Request for Quote document.

6. CONFIDENTIAL INFORMATION, PRIVACY AND PERSONAL INFORMATION

Confidential Information

- 6.1 The Offeror 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.
- 6.2 Upon receipt of a written request by the Customer, the Offeror or any potential Offeror (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 Offeror's or potential Offeror's power, possession or control which contains Confidential Information.

Privacy and Personal Information

- 6.3 If the Offeror collects or has access to Personal Information as a result of the Request for Quote, the Offeror must:
 - a) 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 Offeror was the Customer.
 - b) ensure that the Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
 - c) not use Personal Information other than for the purposes of submitting an Offer, unless required or authorised by law;
 - d) not disclose Personal Information without the consent of the Customer, unless required or authorised by law;
 - e) not transfer Personal Information outside of Australia without the consent of the Customer;

- f) 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;
- g) 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;
- h) ensure that its sub-contractors and agents who have access to Personal Information comply with obligations the same as those imposed on the Offeror under this clause 6.
- i) 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
- j) comply with such other privacy and security measures as the Customer reasonably advises the Offeror in writing from time to time.

6.4 The Offeror must immediately notify the Customer on becoming aware of any breach of clause 6.3.

7. PREVIOUS DISCUSSIONS/UNDERTAKINGS

7.1 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.

8. INSURANCES

8.1 In submitting its Offer, the Offeror 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 Offeror's expense.

8.2 If at the time of submitting its Offer, the Offeror does not have the requested insurance cover or to the specified amount, the Offeror 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.

9. CONFLICT OF INTEREST

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

9.2 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.

9.3 For the purpose of clause 9.1, a Customer employee is an individual who receives or is entitled to receive salary or wages through the Customer's payroll system.

9.4 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 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.

10. EVALUATION CRITERIA

10.1 All Offers received will be evaluated on the following criteria:

- a) Acceptance of the Queensland Government [General Contract Conditions Version 2.0 Published December 2014](#) or the [General Contract Conditions – ICT Products and Services Version 1.0.0 Issued August 2017](#) (whichever is applicable)
- b) Acceptance of [Working on Department of Education Facilities](#);
- c) Acceptance of the [Code of Practice for DoE Suppliers](#); and
- d) Unless otherwise specified in the Request for Quote, the standard evaluation criteria consisting of:
 - o Conformance to Requirements (Specifications);
 - o Whole of Life Costs; and
 - o Support Services.

11. ACCEPTANCE OF OFFER

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

12. VALIDITY PERIOD OF OFFER

- 12.1 The minimum validity period of any offer submitted in relation to a Request for Quote shall be 90 days.

13. SCHEDULES

- 13.1 The Supplier Response Schedule in the Request for Quote is to be completed by the Offeror and the particulars proposed, if accepted or negotiated, shall become part of the Contract.
- 13.2 Any supporting documentation in the Offer shall be referred to in the Supplier Response Schedule and cross referenced.

14. RIGHT TO INFORMATION AND DISCLOSURE

- 14.1 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.
- 14.2 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.
- 14.3 Information contained in an Offer is potentially subject to disclosure to third parties.
- 14.4 If disclosure under the RTI Act, and/or general disclosure of its Offer or part thereof, would be of substantial concern to an Offeror, 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. The Customer cannot guarantee that any information provided by the Offeror, including information that is identified by the Offeror in the Response Schedule will be protected from disclosure under the RTI Act.
- 14.5 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:
- a) the name and address of the Customer;
 - b) a description of the Goods and/or Services;
 - c) Contract commencement date or award date;
 - d) Contract value; and
 - e) name and address of the successful Offeror.
- 14.6 Any proposed variation by the Offeror to clause 14.5 which take away or reduce the entitlements that would otherwise be provided to the Customer under that clause will be null and void.
- 14.7 For more detailed information about the Customer's Right to Information policy, including the Customer's publication scheme and disclosure log refer to <http://deta.qld.gov.au/right-to-information>.

15. COMPLAINT MANAGEMENT

- 15.1 If at any time during the Request for Quote process an Offeror considers that it has been unreasonably or unfairly treated and it has not been able to resolve the issue with the Contact Officer, the Offeror should complete the Procurement Complaint form located at <http://ppr.det.qld.gov.au/corp/finance/procurement/Pages/current-procedures.aspx> and forward to the Procurement Services Branch.