

Terms and conditions

Expression of interest: buildings for reuse

Part A Overview

1.1 The Opportunity

The Department of Education (**Department**) is constructing a new school, the “Inner City South State Secondary College” in Dutton Park. As part of this project, the Department has removed several buildings from the site. The buildings are described in the Attachment to this EOI (the **Buildings**).

The Department invites interested community groups and not-for-profit organisations (**Organisations**) to submit a proposal (**Proposal**) to acquire one or more of the Buildings on the terms set out in this EOI.

1.2 Department’s Objectives

The Department’s objectives include:

- Identifying opportunities for the sustainable reuse of buildings that have made way for the construction of public infrastructure.
- Deriving the best social value outcomes for Queenslanders through utilisation of the Building(s) by Organisations for the benefit of their community stakeholders.
- Checking that successful Organisations understand that they will need to have the funds and resources available to transport and install the Building(s) at their site, obtain all necessary permits and approvals that may be required and carry out repairs and renovations that may be necessary.
- Transferring the Building(s) from the Department at little or no continuing risk to the Department.

It is important that interested Organisations understand that, while the Department is proposing to provide the Building(s) at negligible or no cost for the Building(s) itself, any Organisation that acquires a Building(s) will take on the risk for the Building(s) and will be responsible for all subsequent actions and costs, including costs to continue storing the Building(s) until the Organisation is ready to move them, seeking and obtaining all relevant building, council, State and other approvals and permits, and all repairs and renovations to the Building(s).

1.3 EOI process

Before submitting a Proposal, interested Organisations must attend an inspection of the Building(s) they are interested in. The current storage locations for the Building(s) are set out in the Attachment to this EOI. You can arrange an inspection by contacting the Department.

Proposals must be lodged by 5pm Australian Eastern Standard Time on Thursday 9 April 2020 (**Closing Date**). All clarifications or questions related to the EOI must be communicated in writing directly to the Department contact identified in Item 1.5.



Proposals must be submitted in the form of responses to the Response Schedule set out in Part D (Application form, Expression of interest: buildings for reuse) of this EOI and otherwise in accordance with the requirements of this EOI. Proposals must be lodged by email to BFS BuildingFutureSchools@qed.qld.gov.au.

After considering Proposals submitted in response to this EOI, the Department may choose to enter into negotiations with any shortlisted Organisations with a view to finalising a contract for sale of one or more of the Building(s), intended to be substantially in the form of the contract in Part C of this EOI, (Sale Agreement).

1.4 Evaluation

The criteria (**Evaluation Criteria**) against which the Organisations' Proposals will be evaluated include:

- The anticipated benefits for the Organisation's stakeholders and beneficiaries from the Organisation's Proposal for the Building(s).
- The social value outcomes for Queensland from the Organisation's intended purpose for the Building(s).
- The Organisation's estimated timeframe to commence use of the Building(s) for the purposes outlined in their Proposal.
- The Organisation's apparent financial capacity and means to fund the transport, installation, repair and renovation of the Building(s) (including in relation to all building, council and other permits and approvals that may be required) in accordance with the Organisation's anticipated timelines.
- The Organisation's level of compliance (or otherwise) with the Department's proposed Conditions of Contract set out in Part C of this EOI.

1.5 Department contact

Name: Building Future Schools Fund, Infrastructure Services
Department of Education

Email: BuildingFutureSchools@qed.qld.gov.au

1.6 Probity Adviser

Where an Organisation has a concern in relation to probity or the conduct of the Procurement Process, it may, at the first instance, contact the Probity Adviser by email at the address set out below:

Rory O'Connor
Partner
O'Connor Marsden and Associates
Tel: 1300 882 633
Mob: 0416 107 627
E: roconnor@ocm.net.au

The Organisation should provide details of:

- the proposed probity issue or concern;
- how the probity issue or concern impacts on the Organisation's interest;
- any relevant background information; and
- the Organisation's proposal for the resolution of the probity issue or concern.

Any contact or communication with the Probity Adviser will be disclosed by the Probity Adviser to the Department.

Privacy Notice: The Department is collecting personal information from the Organisation for the purpose of administering the expression of interest process and Contract. Personal information may be shared with Queensland Government agencies and bodies, non-government organisations and other governments in Australia for that purpose. Personal information may be made publicly available in accordance with the requirements of the Queensland Government's procurement policy. An individual is able to gain access to personal information held by the Department about the individual in certain circumstances.

Part B EOI Conditions

The EOI Conditions in this Part B apply to this EOI.

1 Reservation of rights

- 1.1 The Department may make changes to the EOI process in its absolute discretion by notifying Organisations. Without limiting any of the Department's rights in connection with this EOI or otherwise, the Department reserves the right, in its absolute discretion and at any time, to:
- (a) change the structure, procedures, timing, Evaluation Criteria and terms of the EOI, issue amended or varied EOI Conditions, or issue additional or amended information in relation to this EOI;
 - (b) give preference to any one or more of the Evaluation Criteria over the other criteria, exercise discretion in evaluating any non-price Evaluation Criteria, and consider any matter it considers appropriate in evaluating a Proposal;
 - (c) accept or refuse to accept a Proposal received after the closing date or time, or which does or does not satisfy the requirements of this EOI, or accept alternative or innovative Proposals;
 - (d) terminate or reinstate the EOI, or not proceed with supplying the Building(s) as specified and outlined in this EOI, or at all;
 - (e) change and/or negotiate the terms of the Contract;
 - (f) not accept any Proposal, or reject any Proposal at any time (including prior to, during or after the Evaluation Process) for any reason, or discontinue evaluating any Proposal irrespective of the extent to which it satisfies any of the Evaluation Criteria;
 - (g) not provide an Organisation with any reason for any actions or decisions the Department may take or any debriefing, including in respect of the exercise by the Department of any or all of the abovementioned rights; and/or
 - (h) take such other action as it considers in its absolute discretion appropriate in relation to the EOI.
- 1.2 In this EOI, specifying anything after the words 'include' or 'for example' or similar expressions does not limit what else is included.

2 Organisations' responsibilities

- 2.1 It is the responsibility of each Organisation to:
- (a) satisfy itself as to local conditions and facilities that may impact on the Organisation's ability to collect and cover all costs for any Building(s) including to install, repair, refurbish or otherwise use any Building(s);
 - (b) carry out its own investigation as to the feasibility of its Proposal and to rely on that investigation, and pay its own costs of investigating, preparing and lodging a Proposal.
- 2.2 Any party expending money, making commitments or incurring liabilities on the basis of responding to this EOI or in relation to any matter contained in this EOI, does so at its own risk and expense. Proposals not submitted by the Closing Date will be deemed to be 'late'

and may not be considered by the Department. A late Proposal will only be considered by the Department if, in its absolute discretion, the Department makes a decision to do so.

- 2.3 Organisations must comply with all applicable laws in relation to their participation in this EOI Process and in relation to any acquisition by them of one or more Buildings.
- 2.4 The Organisation will not make any public announcement or advertisement in any medium in relation to the EOI without the prior written approval of the Department.

3 Confidential information and Privacy

- 3.1 Organisations (including an entity which obtains the information in the EOI but does not submit a Proposal), must ensure that it and its officers, employees, agents and sub-contractors who are in possession of confidential information of the Department, keep that information confidential except for the purpose of responding to the EOI. If requested by the Department, the Organisation must complete a confidentiality undertaking, in a form acceptable to or provided by the Department, from itself and/or from each of its officers, employees, agents and sub-contractors who receive the information.
- 3.2 If the Organisation collects or has access to any personal information in connection with the EOI Process, it must comply as if it was the Department with the privacy principles in the *Information Privacy Act 2009* (Qld) or the Australian Privacy Principles in the *Privacy Act 1988* (Cth), as applicable, in relation to that personal information, and comply with all reasonable directions of the Department relating to the personal information.

4 No legal relationship

- 4.1 The information contained in this EOI does not constitute an offer, and the conduct of the EOI does not give rise to any legal or equitable relationship (including any process contract) between the Department and any Organisation. No binding contract whatsoever (including a process contract) will be taken to have been entered into or formed in respect of the Buildings or this EOI until such time as a Contract (if any) has been executed by the Department and any successful Organisation.
- 4.2 No Organisation shall be entitled to claim compensation or loss from the Department for any matter arising out of or in connection with the EOI, including but not limited to any failure by the Department to comply with the EOI Conditions or any part of the EOI.

5 Commissions, incentives, collusion and conflicts of interest

- 5.1 An Organisation and/or its representatives must not give or offer to the Department or any officer or employee of the Department, or to a parent, spouse, child or associate of an officer or employee, any inducement, gift or reward, which could in any way tend to influence the Department's actions in relation to a Proposal.
- 5.2 The Organisation warrants that the Proposal is in all respect an independent Proposal and that no collusive, anti-competitive or similar conduct has taken place between the Organisation and any other Organisation or interested party in the preparation of the whole or any part of the EOI.
- 5.3 The Organisation warrants that it and its personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby a conflict of interest is created, or may appear to be created, in conflict with its obligations under these EOI Conditions or the proposed contract, except as disclosed in the Organisation's Proposal.

- 5.4 The Organisation 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 Department and the Organisation's interests during the EOI Process. The Organisation warrants that it will immediately notify the Department if any conflict of interest arises after lodgement of the Organisation's Proposal.
- 5.5 The Organisation warrants that neither it nor its personnel:
- (a) have been convicted of an offence under schedule 1 of the *Criminal Code Act 1889* (Qld) (**Criminal Code**) where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of section 1 of the Criminal Code; or
 - (b) are subject to an order under, or have been convicted of an offence under the *Criminal Organisation Act 2009* (Qld).

6 Decision and debriefing

- 6.1 Unsuccessful Organisations will be notified in writing that they have been unsuccessful in the EOI. All Organisations, whether successful or unsuccessful may seek feedback from the Department contact listed in Item 1.5 of 0 at the completion of the EOI. The Department will not enter into any correspondence, oral or written, about its selection decision(s).

7 Governing law and Right to Information

- 7.1 Any Proposal submitted in response to the EOI shall be governed by and construed in accordance with the laws of Queensland and the Parties submit to the non-exclusive jurisdiction of the courts of Queensland. 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. 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. Information contained in a Proposal is potentially subject to disclosure to third parties.

Part C Conditions of Contract

See Sale agreement