

C7542 – General Conditions of Offer

Consultants for Engineering Projects

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1 Definitions

In these General Conditions of Offer and in the Offer Documents (as defined), all words and expressions shall have the meanings assigned to them in the *General Conditions of Contract (Form C7545)*, and the following words and expressions shall have the meanings ascribed to them here, unless the context indicates a contrary intention:

- a) **“Ethical Supplier Mandate”** means the Queensland Government policy titled “Ethical Supplier Mandate” or any policy that replaces that policy.
- b) **“Ethical Supplier Threshold”** means the Ethical Supplier Threshold described in paragraph 2.3 of the Queensland Procurement Policy.
- c) **“Government Department or Instrumentality”** means any governmental regulator, including Work Health Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission and the Australian Building and Construction Commission.
- d) **“Invitee”** means a person invited by the Principal to make an Offer to carry out the Consultant Services.
- e) **“Offer”** means an Offer resulting from a Public, Private or Sole Invitation.
- f) **“Offer Documents”** includes those documents as set out in the List of Offer Documents in the *Invitation for Offer (Form C7585)*.
- g) **“Offeror”** means any person who submits an Offer to the Principal pursuant to the *Invitation for Offer (Form C7585)*.
- h) **“person”** includes bodies corporate and unincorporated.
- i) **“Private Invitation”** means an invitation for Offer extended by the Principal, generally to a minimum of three persons.
- j) **“Public Invitation”** means an invitation for Offer extended by the Principal to the public whether by advertising in the newspaper or other appropriate publication.
- k) **“QPP Compliance Unit”** means the Queensland Procurement Policy (QPP) Compliance Unit, Office of the Chief Advisor – Procurement, Department of Housing and Public Works.
- l) **“Schedule of Rates”** means a schedule which provides the rate or respective rates of payment for the execution of the service. The rates of payment should not include an amount of GST in respect of the work.
- m) **“Single Invitee”** refers to one supplier, despite availability of other suppliers, without a competitive bidding process, for a justifiable reason (that is, only one out of multiple suppliers selected).
- n) **“Sole Invitation”** means an invitation for Offer extended by the Principal directly to a single supplier.
- o) **“Sole Supplier”** refers to only one genuine supplier that can provide the requirements of the contract.

2 Interpretation

- a) References to clause numbers are references to numbered clauses of these *General Conditions of Offer (Form C7542)*.
- b) The singular includes the plural and vice versa and words of any gender include the other genders.
- c) Where an Offeror consists of two or more persons, these *General Conditions of Offer (Form C7542)* shall bind them jointly and severally.

3 Nature of contract

The proposed contract will have the following characteristics:

- a) payment will be based on
 - a schedule of rates, or
 - fixed fee, or
 - a combination of schedule of rates and fixed fee, or
 - percentage fee, or
 - cost plus arrangements,as indicated in the *Offer for Consultant Services – Price Component (Form C7587)* for performance of the Consultant Services described in the Offer Documents,
- b) assessment of Offers will be by either
 - Qualification Based Selection (QBS), or
 - Value Based Selection (VBS)as indicated in the *Invitation for Offer (Form C7585)*.

4 General rules

4.1 Stamp Duties

All liability for Stamp Duties shall be with the Principal.

4.2 No claims by unsuccessful Offerors

No unsuccessful Offeror shall have any claim against the Principal on any ground whatsoever (whether in contract, tort or otherwise) arising out of or in any way connected with the manner in which Offers are invited or considered by the Principal, the discussion or clarification by the Principal with any Offeror concerning any Offer or the failure by the Principal to consider or accept any Offer.

4.3 Accepts conditions, no reliance

By lodging an Offer, the Offeror:

- a) accepts these *General Conditions of Offer (Form C7542)* without qualifications, and

- b) acknowledges that the Offeror has not relied upon any promise, representation, statement, document, information, warranty or undertaking made, provided or given by the Principal or by any person on behalf of the Principal (whether written, oral or by conduct) which is not expressly set out or referred to in the Offer Documents.

4.4 No disclosure

Subject to the provisions of any State or Federal law dealing with freedom of information, the Principal shall not be obliged to disclose to any Offeror the contents of any Offer from another Offeror.

4.5 Principal clarifications

The Principal is not bound to consider all or any Offers and may, in its absolute discretion, clarify with any Offeror which has submitted a Conforming Offer and, in particular, may in such clarifications accept changes to the Offer Documents.

4.6 Lowest priced Offer

The Principal is not bound to accept the lowest priced Offer or any Offer.

4.7 Withdrawal of Invitation

The Principal reserves the right in its absolute discretion to withdraw at any time and for any reason whatsoever the Invitation for Offer from all or any persons to whom it has been extended or given without recourse to the Principal.

5 Content of the Offer

5.1 Basic Offer rules

The Offer shall comply with the following:

- a) be for the whole of the services described in the Offer Documents
- b) be submitted on the Offer forms provided by the Principal and required by these Conditions of Offer
- c) be signed by a person or persons authorised to enter into the proposed contract on behalf of the Offeror
- d) where:
 - the Offeror is an individual, a Local Government or a State Government entity – state the Offeror's full name, street and postal addresses and the registered business name (if any) under which the individual, etcetera trades,
 - the Offeror is a firm or partnership – state the business name under which the firm or partnership trades, the full names and addresses of all proprietors of the firm or all partners of the partnership and the street and postal addresses of the principal place of business of the firm or partnership, and
 - the Offeror is a corporation – state the full name of the corporation, its Australian Business Number and the address of its registered office.
- e) be endorsed to confirm that the Offeror has allowed in the Offer for all matters mentioned in any issued Notice to Offerors and each Notice to Offerors shall be identified by its number and date of issue

- f) state all money amounts in Australian currency
- g) have any alterations initialled by or on behalf of the Offeror
- h) be accompanied by the documents, duly completed, mentioned in Documents to be completed and returned with your Offer, in the *Invitation for Offer (Form C7585)* and any other documents required to be submitted with the Offer by any of the other documents mentioned in the *List of Offer Documents* in the *Invitation for Offer (Form C7585)*
- i) for Offers submitted to an Offer Lodgement Box – include three bound sets of the Offer. One set shall be marked "Original" and the other sets shall be marked "Copy" and in the event of any discrepancies between the sets, the set marked "Original" shall prevail
- j) for Offers submitted using a secure electronic tendering system used by the Principal – shall be in a non-editable format, such as Adobe Acrobat PDF or equivalent, and
- k) indicate the person delegated by the Offeror to be responsible for any dealings with the Principal, receiving Notices to Offerors.

5.2 Alterations / additions

The Offeror shall not alter or add to the Offer Documents except as required by these *Conditions of Offer (Form C7542)*.

5.3 Schedules to be included

Offers shall include:

- Completed *Offer for Consultant Service – Non-Price Component (Form C7586)* and Attachments, and
- Completed *Offer for Consultant Service – Price Component (Form C7587)* and Attachments

in accordance with the requirements of the relevant *Supplementary Conditions of Offer (Form C7551)*.

5.4 Verification of Consultant Insurance

Offers shall include:

- an original or certified copy of the Consultant's professional indemnity insurance and public liability insurance policies that meet the requirements set out in Clause 8.5 of the *General Conditions of Contract (Form C7545)*, or
- a Certificate of Currency for professional indemnity insurance and public liability insurance that meet the requirements set out in Clause 8.5 of the *General Conditions of Contract (Form C7545)*, or
- a *Statutory Declaration – Professional Indemnity Insurance and Public Liability Insurance (Form C7547)* confirming that the consultants Professional Indemnity Insurance satisfies the requirements of Clause 8.5 of the *General Conditions of Contract (Form C7545)*.

5.5 Offered Amount

The Offered Amount (if relevant) shall include:

- all costs of complying with the Offer Documents and those associated with carrying out all matters and doing all things necessary for the due and proper performance and completion of the Consultant Services, including but not limited to licence fees, royalty payments and all charges and taxes,

and shall not be subject to adjustment for rise and fall in costs unless provision has specifically been made for such adjustment in the Offer Documents.

6 Notices to Offerors

6.1 Issued to all Offerors

Any clarification issued to Offerors concerning any aspect of the Offer Documents will be issued in the form of Notices to Offerors and will be issued simultaneously to all Offerors.

6.2 Issued before closing of Offers

The Principal may issue Notices to Offerors before the closing time for Offers to revise, amend or modify any part of the Offer Documents.

Notices to Offerors should be issued in a timely manner, to allow Invitees / Offerors sufficient time to address all matters raised in the Notices.

6.3 Reliance on Principal's explanation or interpretation

No explanation or interpretation of the Offer Documents by the Principal may be relied upon by the Offeror, unless given in the form of a *Notice to Offerors (Form C7555)*.

6.4 Endorsement

The *Offer for Consultant Services – Non-Price Component (Form C7586)* shall be endorsed to indicate all Notices to Offerors that have been received (Notice Numbers and dates) and that the Offer has allowed for all matters raised in such Notices to Offerors.

7 Offer validity period

7.1 Withdrawal of Offers

Offers may be withdrawn at any time prior to the closing time / date for Offers by notice in writing to the Principal. Such Offers will be set aside for collection (if submitted to a Lodgement Box) by the Offeror after the opening of Offers.

7.2 Period open for acceptance

In consideration of the Principal receiving and considering the Offer, the Offeror agrees (subject to Clauses 9 and 11) that the Offer shall remain open for acceptance by the Principal for a period of four months (or such time as otherwise advised to the Offeror in writing by the Principal) after the nominated closing time / date for Offers.

7.3 Affirming alterations

Where an Offeror affirms an altered Offer in accordance with Clauses 9, 10 and 11, the Offeror agrees that in consideration of the Principal receiving and considering the affirmed altered Offer that altered Offer shall remain open for acceptance for the period mentioned in Clause 7.2.

8 Lodgement of Offers

8.1 Form / Delivery of Offers

8.1.1 For Offers submitted using a secure electronic tendering system used by the Principal (which does not include email), Offers shall:

- a) be submitted in a non-editable format, such as Adobe Acrobat PDF or equivalent
- b) be submitted by the closing time and date as specified in the *Invitation for Offer (Form C7585)*, and
- c) include the completed *Offer for Services – Non-Price Component (Form C7586)* and *Offer for Services – Price Component (Form C7587)*.

8.1.2 For Offers submitted to an Offer Lodgement Box, Offers shall:

- a) be enclosed in a sealed envelope addressed to the Principal at the Offer Lodgement Box or Opening Location for the closing of Offers and marked with the Contract Number
- b) have Assessment Schedules and Fee Schedules sealed in separate envelopes for other than Sole invitations, and
- c) be lodged at the nominated Offer Lodgement Box / Opening Location by the specified closing time / date for Offers.

8.2 Late Offers

8.2.1 Subject to Clause 8.2.2, any Offer lodged after the nominated closing time / date for Offers will not be considered.

8.2.2 If there is evidence satisfactory to the Principal that a late Offer had been despatched to the nominated Offer Lodgement Box / Opening Location in sufficient time to reach that place under normal circumstances and was still in the course of delivery at the specified closing time, then the Principal may consider that Offer.

8.3 Offers forwarded indirectly or by other means

Offers forwarded by means not specified in Clause 8.1 of this document will not be considered.

8.4 Recipients of Offer Documents

For a Public Invitation, the Principal may, on receipt of a written request, make available to interested parties, the names of those persons that have been issued with Offer Documents up to the time of such request. This does not apply to Private invitations.

9 Opening of Offers

9.1 Private opening

All Offers received shall be opened in private as soon as possible after the specified closing time / date for Offers.

9.2 Advice of successful Offeror

Unsuccessful Offerors will be advised of the name of the successful Offeror (if any) and the Contract Amount in the *Unsuccessful Advice (Form C7598)* or equivalent.

9.3 No Offer fees

No Offer deposit or document fee is required.

9.4 Discussions with Offerors

After receipt of offers, there may be a need to clarify the nature of the offer or component of it. Clarification may serve to ensure that both the department and the offeror have a common understanding of the requirements and what is being offered. Clarification may be sought in writing or through interviews with the offeror's representatives. However, any clarification or interview shall not provide:

- i. the opportunity for the substance of an offer to be altered in any form, or
- ii. an offeror with an unfair competitive advantage due to the outcomes of the clarification or interview.

Post offer clarifications may be held with the offeror which has offered the best value offer or, where a two-stage process is in place, with short listed offerors.

Clarifications are aimed at securing the best outcome for the department but may not change the substance of the original requirement. Clarifications may secure improved price, delivery conditions, warranties and so on, but may not be used as a vehicle of bargaining with one supplier using another offer as a lever to secure a lower price.

Clarifications cover issues (including price) between the department and the consultant which may alter the detail of the best value offer, ultimately to provide a better result for the department from the project deliverables. Clarifications shall be approved by the Principal's Delegate.

Price bargaining is prohibited (for example, playing one offeror off against another).

Any clarifications or interviews with offerors shall be:

- attended by at least two departmental officers
- held at departmental premises (except where inspection of offeror's premises is required)
- held as an official meeting with minutes being kept, and
- before the meeting closes, a consensus should be reached by both parties on the outcomes of major points discussed and a summary of such points should be signed by both parties.

Where the Principal may conduct post offer clarifications with Offerors who have been short listed on the basis of their offer, any agreements shall be confirmed in writing.

10 Nonconforming, conditional and alternative Offers

10.1 Nonconforming Offer

Subject to Clause 10.2, an Offer shall be deemed to be a Nonconforming Offer if it:

- a) does not comply with the requirements of, or if it contains provisions not required or allowed by the Offer Documents

- b) contains alterations or erasures or sets out money amounts, which are not clearly and legibly stated
- c) does not include a completed Offer Form
- d) does not include either:
 - an original or certified copy of the Consultant's professional indemnity insurance and public liability insurance policies that meet the requirements set out in Clause 8.5 of the *General Conditions of Contract (Form C7545)*, or
 - a Certificate of Currency for professional indemnity insurance and public liability insurance that meet the requirements set out in Clause 8.5 of the *General Conditions of Contract (Form C7545)*, or
 - a *Statutory Declaration – Professional Indemnity Insurance and Public Liability Insurance (Form C7547)* confirming that the consultant's Professional Indemnity Insurance satisfies the requirements of Clause 8.5 of the *General Conditions of Contract (Form C7545)*.
- e) does not specifically and concisely address each of the offer selection criteria
- f) does not include appropriate fee schedules
- g) does not address or comply with the Ethical Supplier Threshold requirement, or
- h) does not provide information required in accordance with these *General Conditions of Offer (Form C7542)*.

The Principal may reject any Nonconforming Offer but may give an Offeror an opportunity to remedy any non-conformance that does not compromise the fair dealing aspects of the process.

10.2 Withdrawal of conditions, etcetera

Where an Offer contains a condition or assumption, considered unacceptable or unreasonable, the Principal may give the Offeror the opportunity to withdraw such condition / assumption within two working days, otherwise the Offer will be treated as a Nonconforming Offer and be rejected.

10.3 Alternative Offers

The Offeror may submit one or more Alternative Offers but only if it has submitted a Conforming Offer. The Principal reserves the right to consider and accept any Alternative Offer.

11 Discrepancies and errors in the Offer

Should an Offeror notify the Principal after the closing of Offers of any error or discrepancy in the Offeror's Offer, the Principal may:

- a) reject the Offer, or
- b) where the error or discrepancy is in the Offeror's schedule of rates – request the Offeror either to confirm the offered rates or withdraw the Offer immediately, or
- c) where an error or discrepancy is in the Offeror's lump sum component – request the Offeror either to alter and then confirm the Offer or withdraw the Offer immediately.

11.1 Non-Compliances Table

Table 11.1 below lists non-compliances that may be found in offers and recommended actions should any of them be identified in an offer under examination. The list is not exhaustive and other types of non-compliance may arise.

Table 11.1 – Offer Non-Compliances and Recommended Actions

No.	Non-Compliance	Recommended Action
1	Offer did not include fully completed Price Component (second envelope – Form C7587).	Will not be considered. Record the date and time of receipt and return to Offeror.
2	<i>Non-Price Component of Offer (Form C7586)</i> did not include completed Assessment Schedules 1-5 (in part or full).	Will not be considered.
3	Offer does not comply with the Ethical Supplier Threshold.	Will not be considered.
4	Offer was not for the whole of the required service.	Will not be considered.
5	Offer Forms were not signed by an authorised person.	Will not be considered.
6	Alternative offer submitted but no conforming offer.	Will not be considered.
7	Conditional offer submitted in addition to a conforming offer.	Conditional offer may be considered or rejected at the Principal's discretion.
8	Alternative offer submitted in addition to a conforming offer.	Alternative offer may be considered or rejected at the Principal's discretion.
9	Offer did not include non-critical information (for example, contact details).	Minor non-conformance. Offeror may be given opportunity to comply with the requirements of the invitation documents.
10	Offer submitted to <i>Lodgement Box</i> after the nominated closing time / date.	Minor non-conformance. May be considered – if there is satisfactory evidence that a late Offer had been despatched to the Offer Lodgement Box / Opening Location in sufficient time to reach that place under normal circumstances and was still in the course of delivery at the specified closing time. Rejection of consideration of late delivery of offers need to be done in liaison with the Procurement Officer and Assessment Panel Chair (where nominated).
11	Offer submitted electronically after the nominated closing time / date.	Will not be considered, unless online system provides a grace period after the closing time. Rejection of consideration of late delivery of offers need to be done in liaison with the Procurement Officer and Assessment Panel Chair (where nominated).

No.	Non-Compliance	Recommended Action
12	Offer submitted by means not specified in Clause 8.1 of the <i>General Conditions of Offer (Form C7542)</i> .	Will not be considered.
13	Electronically submitted offer was not in non-editable format.	May be considered. Offeror may be given opportunity to comply with the requirements of the invitation documents.
14	Offer not submitted under prequalified entity name and ABN.	Will not be considered.
15	Offeror did not acknowledge all Notices to Offerors (NTO) in Section 1.5 of <i>Offer – Non-Price Component (Form C7586)</i> .	Will not be considered.

12 Assessment of Offers

Assessment of Offers will be in accordance with relevant provisions in the *Supplementary Conditions of Offer (Form C7551)*.

13 Acceptance prerequisites

13.1 Alteration of Offer

The Offeror will not be permitted to alter its Offer after it has been lodged unless allowed for in the Offer Documents.

13.2 Additional information

Notwithstanding any other requirements of the Offer Documents, the Principal may require the Offeror to submit additional information to allow further consideration of its Offer before any Offer is accepted.

13.3 Failure to submit additional information

Should the Offeror fail to submit any of the additional information so required by the date and time stipulated by the Principal, the Principal may decline to consider the Offer any further.

13.4 Sub-consultant information

Without limiting the generality of the previous provisions, the Principal may require that the Offeror submit similar information to that required to be furnished by the Offeror by these *Conditions of Offer (Form C7542)* in respect of any of the Offeror's proposed Sub-consultants.

14 Acceptance of an Offer

An Offer will not be deemed to have been accepted until a *Letter of Acceptance (Form C7599)* or equivalent has been received by the Offeror, via email attaching a scanned copy of the Letter of Acceptance, followed by hard copy to the Offeror's address set out in its Offer.

15 Feedback to unsuccessful Offerors

Following award of any contract, unsuccessful Offerors may apply in writing to the Principal's Delegate nominated in the *Invitation for Offer (Form C7585)*, requesting a meeting for feedback on their Offer. Feedback will include an explanation of why the offer was unsuccessful, including any areas of weakness or non-compliance in the offer. Suggestions may be given for improvements to future submissions. Details of individual Offers including scores will not be divulged.

16 Cost of Offer preparation

The Principal will make no payment to the Offeror:

- a) for any costs, losses or expenses incurred by the Offeror in preparing its Offer
- b) in respect of any discussions, clarifications, enquiries or requests for details or information made by or on behalf of the Principal after the closing time for Offers, or
- c) for any work undertaken by the Offeror after the closing time for Offers, including clarifications with the Principal.

17 Confidential information

17.1 Principal's undertaking

The Principal shall regard all Offers as being confidential. However, because of Freedom of Information laws and powers of Courts regarding disclosure of information, Offerors are advised to highlight any information of a confidential nature by labelling it as "Commercial in Confidence". Such action does not of itself guarantee that legislation or the Courts will not make the information available to third parties.

17.2 Consultant's undertaking

The Offeror's attention is drawn to Clause 12.9.1 of the *General Conditions of Contract (Form C7545)* and by submitting an Offer the Offeror agrees that it will be bound by that clause as if it were the "Consultant".

18 Ethical supplier requirements

18.1 Ethical Supplier Threshold

- a) The Offeror must comply with the Ethical Supplier Threshold.
- b) The Offeror must complete and submit with the Offer 'Attachment D Ethical Supplier Threshold' of *Offer for Consultant Service Non-Price Component (Form C7586)*.
- c) The Principal may obtain information about the Offeror relevant to the Offeror's compliance with Clause 18.1a) that may be held by the QPP Compliance Unit or any Government Department or Instrumentality and take the information into account in assessing the Offeror's compliance with Clause 18.1a).

18.2 Ethical Supplier Mandate

- a) The Offeror acknowledges that a failure to comply with the Principal's policies that apply to the work under the proposed contract or the Offeror's obligations under the proposed contract may result in the imposition of a demerit or sanction under the Ethical Supplier Mandate, in addition to any other remedies available to the Principal under the Contract.

19 Ethics

The Offeror's attention is drawn to Clause 12.2 of the *General Conditions of Contract (Form C7545)* and by submitting an Offer the Offeror warrants that it has complied with that clause.

20 Privacy information

The Offeror's attention is drawn to Clause 12.9 of the *General Conditions of Contract (Form C7545)* and by submitting an Offer the Offeror agrees that it will be bound by that clause as if it were the "Consultant".

21 Moral rights

The successful Offeror consents, in relation to the Contract Material:

- a) to being attributed as author of works comprised in the Contract Material in a form and manner acceptable to the Principal, and
- b) to the specific acts or omissions (Specify the acts or omissions permitted, for example, if the deliverable is a survey form, the consent may be to the amendment, deletion, alterations, selection of aspects of the survey form, at the discretion of the Principal).

Before an individual commences work in respect of the Contract Material on behalf of the successful Offeror, the successful Offeror shall obtain from that individual, in writing, and provide to the Principal, on request:

- a) All consents, permissions and assignments to enable the Principal to exercise in full, without cost to the Principal and without impediment, the rights granted under this clause.
- b) Without limiting paragraph (Form C), a consent to any act or omission (including the specific acts or omissions set out below) which would otherwise infringe the Moral Rights of that individual. If requested by the Principal, such consent will be in a form specified by the Principal.

For the purpose of this clause:

- a) 'Moral Rights' means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968 (Commonwealth)*, and rights of a similar nature anywhere in the world whether existing at the beginning date or which may come into existence on or after the beginning of the agreement.
- b) 'Contract Material' means any material that exists at the beginning of the agreement and which is provided in connection with the agreement, and any material provided in connection with agreement that is created, written or otherwise brought into existence by or on behalf of the successful Offeror in the course of performing the agreement.

