

# General Terms and Conditions – Conditions of Offer (Goods)

## QBuild, Department of Energy and Public Works

- A1** Meanings assigned to words and expressions in the Conditions of Contract will apply to those words and expressions used in the Tender Documents and, except where the context otherwise requires, 'include' is not a word of limitation.
- A2** The offer documents comprise the offer form, letter of invitation to offer (if any), these Conditions of Offer and General Terms and Conditions - Conditions of Contract (Goods), the **Conditions of Working with QBuild – Supplier of Goods**, the Australian Standard® Code of Tendering (AS4120 - 1994) as amended by these Conditions of Offer and such specifications, drawings and any other information issued by the Principal for the purposes of tendering and which may be inspected or obtained at the place of closing of offers. AS4120-1994 is available for purchase at the Standards Australia Webstore, <http://www.standards.org.au>.
- A3** An offer is made on the basis that the Offerer has full knowledge of all matters relating to the Contract.
- A4** An offer received by means other than expressly provided for in the Conditions of Offer may not be considered.
- A5** The Offerer is required to satisfy itself as to the correctness and sufficiency of its offer. An offer will be deemed to be on the basis that the Offerer has a full knowledge of all matters relating to the Contract.
- A6** The Principal will not be bound by any oral advice or information furnished in respect of the offer but will be bound only by written advice or information given or furnished by it (which may be given electronically).
- A7** The Principal will not be bound to accept the lowest or any offer. Without limitation the Principal may accept an offer or any part of an offer contained in the offer schedule (where the offer schedule provides for the acceptance of part offers) which on a consideration of all the circumstances appears to be the best "value for money" in accordance with the Queensland Procurement Policy. The Principal may consider, accept or decline to accept any offer. An offer will not be deemed to have been accepted until the date of notification in writing to the Offerer of such acceptance.
- A8** The Offerer acknowledges and agrees that if awarded a Contract as a result of submitting an offer, it agrees to comply with the requirements of the **Conditions of Working with QBuild – Suppliers of Goods** and, prior to delivering the Goods must be a QBuild registered Supplier.
- A9** Offerers may be required to comply with due diligence requirements; refer to **Conditions of Working with QBuild – Suppliers of Goods**.
- A10** The rights and obligations in relation to Right to Information and disclosure are as set out in the **Conditions of Working with QBuild – Suppliers of Goods**.
- A11** The law governing the offer documents and any subsequent contract, if applicable, is the law of Queensland and the parties submit to the non-exclusive jurisdiction of the Courts of Queensland.
- A12** To submit offers:
- The offer must be complete in all details; fully priced and accompanied by any other documents required to be submitted; and
- For hardcopy offers:
- the offer must be signed.
  - offers must be enclosed in an envelope, sealed and endorsed with the location and description of the work and reference number (if any) and lodged at the place named in the offer form, by the date and time given.
  - any offer not in the tender box before the specified closing time may be rejected at the discretion of the Principal. In exercising its discretion as to rejection of any offer, the Principal will, amongst other factors, consider any evidence that the offer was sent by prepaid post or recognised carrier in time to be delivered, within the time stated, in the ordinary course of mail or delivery by the recognised carrier.
- For facsimile offers:
- the offer must be signed.
  - offers must include the location and description of the work and reference number (if any) and faxed to the number named in the offer form, by the date and time given.
  - any offer not received before the specified closing time may be rejected at the discretion of the Principal.
- For electronic offers:
- the offer must be lodged electronically to the address stated in the offer form for electronic offers by the date and time given; and

- b) an electronic offer will be deemed to have been delivered at the time the electronic offer enters the Department of Energy and Public Works information system designated to receive the electronic communication. Any electronic offer that has not entered the designated information system before the specified closing time may be rejected at the discretion of the Principal.
- A13** Without derogating from clause A7, and notwithstanding clause 6.6 of AS4120-1994, in considering or accepting any offer, the Principal may, without being under any obligation to do so, in its absolute discretion and at any time, seek clarification in respect of any aspect of an offer, shortlist or prefer any one or more Offerers, and discuss or negotiate with or receive final offers from any one or more Offerers, in such a manner and as to such aspects of the offer, as the Principal determines.
- A14** The Offerer must comply with the Ethical Supplier Threshold and the Ethical Supplier Mandate and the Offerer must complete the Ethical Supplier Threshold questionnaire included in the Offer Form. Any response indicating non-compliance with the Ethical Supplier Threshold criteria will result in the Offer not being considered as a conforming Offer.
- A15** The Offerer must provide such additional information as may be requested by the Principal, including relating to compliance with the Ethical Supplier Threshold and Ethical Supplier Mandate.
- A16** Notwithstanding that the Principal may have invited offers from selected potential Offerers or has otherwise procured submission of offers, the Principal may decline to consider or accept an offer from an Offerer who, within five (5) Business Days of being requested to do so, has not been able to satisfy the Principal that it has sufficient financial capacity to satisfactorily perform and complete the Contract in accordance with its terms. The Offerer may be requested to provide financial information to a party nominated by the Principal for the purpose of an assessment by the Principal as to the Offerer's financial capacity and a failure to provide the requested information, within five (5) Business Days of such request, may result in a decision by the Principal that the Offerer does not have sufficient financial capacity to satisfactorily perform and complete the Contract in accordance with its terms.
- A17** If the Offerer provides an offer for the Supply of Goods on a form other than the Offer Form provided, and the Principal issues a purchase order or work order for the Goods, these Conditions of Offer and the General Terms and Conditions - Conditions of Contract (Goods) will apply to any such order.
- A18** All information contained in the Offer Documents which is not in the public domain is to be treated as confidential ("Confidential Information"). Confidential Information contained in the Offer Documents is only to be used for the purpose of preparing an Offer in response to the Invitation to Offer and the Offer Documents.
- A19** A party issued with Offer Documents:
- (a) must ensure that only appropriate employees have access to the Confidential Information. In all such cases, the party is to inform such employees of the confidential nature of the information and that it must not be disclosed.
  - (b) must not and must ensure that its employees and agents do not at any time disclose such Confidential Information directly or indirectly to any person whatsoever for any reason or use or permit it to be used directly or indirectly for any reason.
  - (c) fully indemnifies the Principal against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of disclosure or unauthorised use of Confidential Information by the party, its employees and agents.
- A20** Information relating to the Offerer relevant to the evaluation criteria that may be held by any Government Department or Instrumentality, may be obtained by or made available to the Principal and the offer evaluation panel for its information and verification, and for the purposes of Offer evaluation.
- A21** The Principal may decline to consider or accept an offer from an Offerer who, at the date of submission of the offer and any time prior to the award of an offer, is subject to a current sanction under the Ethical Supplier Mandate according to the online supplier check tool released and current at the time and date at which offers were invited.
- A22** Notwithstanding any other provision of the Offer Documents or an offer, the Offerer acknowledges and agrees that the Principal may refer matters of non-compliance with the Ethical Supplier Mandate to the Queensland Government Procurement Compliance Branch within the Department of Energy and Public Works, who may publish information about sanctions imposed on the Offerer under the Ethical Supplier Mandate.