



CONDITIONS OF QUOTE

1. INTERPRETATION

1.1 Definitions

In these Invitation to Quote Process Terms:

Acceptance Notice has the meaning given to that term by clause [9.2\(a\)](#).

Alternative Quote means a Quote submitted in accordance with clause [5.5](#).

Associate of the Respondent means any Related Body Corporate of the Respondent and any officer, employee, agent, contractor, consultant, adviser of the Respondent.

Business Day means a day which is not a Saturday, Sunday or public holiday in Noosa, Queensland.

Closing Date means the time and date set out in Invitation to Quote Document.

Conflict of Interest includes engaging in any activity, or having any interest, which conflicts or may conflict with the ability of the Respondent to submit a Quote in good faith and objectively.

Conforming Quote has the meaning given in clause [5.4](#).

Consequential Loss means:

- (a) indirect loss;
- (b) loss of profits;
- (c) loss of revenue;
- (d) loss of savings;
- (e) loss of opportunity;
- (f) loss of bargain;
- (g) loss of use;
- (h) damage to credit rating;
- (i) loss of or damage to reputation, future reputation or publicity;
- (j) loss in connection with claims made by third parties;
- (k) remote, abnormal or unforeseeable loss; and
- (l) any consequential loss or damage that is similar to the losses in this definition, whether or not such loss or damage was foreseeable or within the contemplation of the Principal, Prospective Respondents and/or the Respondents at the time the Principal entered into these Invitation to Quote Process Terms.

Contract Administrator means the person identified in Invitation to Quote.

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Contract Documents means:

- (a) the Invitation to Quote;
- (b) the Terms and Conditions contained in and referred to in Part 3 of the Invitation to Quote;
- (c) the Service Specification contained in Invitation for Quote;
- (d) all Schedules and Attachments to the Invitation to Quote excluding the Supporting Documentation;
- (e) all Notice to Respondents;
- (f) the Invitation to Quote Response Form of the successful Respondent; and
- (g) the Acceptance Notice.

Contract Number for the Service Contract means the unique identifying number for the Service Contract specified in the Invitation to Quote.

Evaluation Criteria for the Service means the evaluation criteria for the Service set out in the Invitation to Quote.

General Terms and Conditions means the document titled “General Terms and Conditions” set out in the Invitation to Quote.

Government Entity means any government or statutory body (including a business unit or division of the Principal, a local government, a government owned business, State agency or authority or Commonwealth agency or authority).

Information Session means the information session referred to and set out in the Invitation to Quote (if applicable).

Intellectual Property Rights means all intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trademarks, designs, patents, inventions, circuit layouts, copyright and analogous rights, confidential information, know-how and all other intellectual property rights as defined in Article 2 of the convention establishing the World Intellectual Property Organisation of 14 July 1967 as amended from time to time.

Invitation to Quote means:

- (a) the document titled “Invitation to Quote” and its schedules to which these Conditions of Quote Terms are attached; and
- (b) these Condition of Quote Terms.

Invitation to Quote Documents means the Invitation to Quote Process Terms but does not include any Notice to Respondents.

Invitation to Quote Process Terms means this document titled Conditions of Quote, including its schedules, Notice to Respondents and the Invitation to Quote including its schedules.

Invitation to Quote Process means the process of the Principal inviting Quotes, the preparation and submission of Quotes by Respondents, the communications and negotiations between the Principal and Respondents in relation to the process and Quotes, the subsequent consideration and evaluation of Quotes by the Principal and the negotiation of and entering into Service Contracts.

Invitation to Quote Response Form means the form set out in ITQ Response Form.

Local Government Act means the Local Government Act 2009 (Qld).

Negotiations means negotiations in accordance with clause [7.2](#).

Non-conforming Quote has the meaning given in clause [5.4\(b\)](#).

Notice to Respondents has the meaning given to that term by clause [3.4\(b\)](#).

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Principal means Noosa Shire Council ("Council").

Principal Confidential Information means any technical, commercial or other information, ideas, concepts, know-how, data, drawings, specifications or designs of any kind in any form or medium supplied or made available by the Principal or brought into existence by the Respondent for the submission of the Quote, including (but without limiting the generality of this definition):

- (a) the information in these Invitation to Quote Process Terms; and
- (b) the Respondent's Quote.

Prospective Respondent means any person that has:

- (a) received a copy of the Invitation to Quote, but has not submitted a Quote.

Quote means a Quote or Quotes (including Alternative Quotes submitted under clause [5.5](#)) submitted by the Respondent in response to these Invitation to Quote Process Terms (as varied in accordance with clause [8](#)).

Related Body Corporate has the meaning given in the Corporations Act 2001 (Cth).

Required Information for the Service means the information and documentation for the Service specified in the Invitation to Quote.

Respondent means any person lodging a Quote.

RTI Act means the Right to Information Act 2009 (Qld).

Service means the services (and, if applicable, goods) to be supplied under the Service Contract.

Service Contract means the contract between the Principal and the successful Respondent comprising:

- (a) the Invitation to Quote;
- (b) the General Terms and Conditions contained in and referred to in the Invitation to Quote;
- (c) the Service Specification contained in the Invitation to Quote excluding the Supporting Documentation;
- (d) all Schedules to the Invitation to Quote excluding the Supporting Documentation;
- (e) all Notice to Respondents;
- (f) all responses to clarifications and information provided by the successful Respondent;
- (g) the Invitation to Quote Response Form of the successful Respondent; and
- (h) the Acceptance Notice.

Service Specification means the specification set out in the Invitation to Quote.

Supporting Documentation means the documentation set out as Supporting Documentation in schedule 5 of the Invitation to Quote.

1.2 Undefined terms

In these Invitation to Quote Process Terms, where a term is not defined in clause [1.1](#), but is defined in the Contract Documents, it has the meaning given in the Contract Documents.

1.3 Construction

Unless expressed to the contrary, in these Invitation to Quote Process Terms:

- (a) words in the singular include the plural and vice versa;

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- (b) any gender includes the other genders;
- (c) all references to time are to the time in Nambour, Queensland;
- (d) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (e) “includes” means includes without limitation;
- (f) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- (g) a reference to:
- (h) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
- (i) a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;
- (j) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
- (k) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation; and
- (l) Clause, schedule and annexure references in these Invitation to Quote Process Terms are references to clauses, schedules and annexures of these Invitation to Quote Process Terms, unless stated otherwise.

1.4 Headings

Headings do not affect the interpretation of these Invitation to Quote Process Terms.

1.5 Inconsistency

In the event of an inconsistency between the parts of these Invitation to Quote Process Terms listed in this clause 1.5, the document higher in the list shall prevail to the extent of the inconsistency:

- (a) these Invitation to Quote Process Terms (other than the Information Session, the Contract Documents and the Invitation to Quote Response Form);
- (b) the Contract Documents; and
- (c) the Invitation to Quote Response Form.

2. INFORMATION SESSION

2.1 Information Session

- (a) An information session may be held as set out in the Invitation to Quote (Information Session).
- (b) Attendance by Prospective Respondents at the Information Session is recommended but is not compulsory.
- (c) Without limiting the rights of Prospective Respondents under clause 4.3, the Principal requires Prospective Respondents to submit questions and requests for clarification in writing to the Principal prior to the Information Session. Such advance written questions and requests for clarification will be considered by the Principal and the Principal will endeavour to respond to them:
 - i. at the Information Session verbally;
 - ii. after the Information Session in writing; or
 - iii. under the process set out in clause [4.3](#).

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- (d) The Principal may, at its discretion, address any questions or requests for clarification that are raised at the Information Session by:
 - i. responding in whole or in part during the Information Session; or
 - ii. declining to responding during the Information Session and, instead, issuing a written response after the Information Session, once it has had an opportunity to consider the question or request for clarification.
- (e) If the Principal provides a verbal response during the Information Session, it may vary or qualify that response by issuing a written response at any time after the Information Session. Any written response issued by the Principal following the Information Session shall supersede verbal responses provided during the Information Session to the extent of any inconsistency.
- (f) At the Information Session, the Principal will provide general information about the procurement contemplated by the Invitation to Quote Documents and will endeavour to answer questions and requests for clarification submitted to the Principal in accordance with clause [2.1\(c\)](#).
- (g) Questions and requests for clarification put to the Principal, together with answers and responses to those questions and requests for clarification, will be issued in writing to all Prospective Respondents, regardless of whether or not they attend the Information Session. In doing so, the Principal will endeavour not to identify the Prospective Respondent that asked the question or made the request for clarification, unless the question, request for clarification, answer or response identifies the Prospective Respondent.
- (h) No answers or responses issued by the Principal under this clause [2.1](#) will form part of the terms of these Invitation to Quote Process Terms unless the Principal issues them as an Notice to Respondents.
- (i) Any answers or responses issued by the Principal under this clause [2.1](#) are issued subject to terms of these Invitation to Quote Process Terms.

3. INVITATION TO QUOTE PROCESS

3.1 Limited liability of the Principal

The Principal's total liability to each Respondent and Prospective Respondent whether in contract, tort (including for negligence or misrepresentation), restitution, under statute (to the extent permitted by law) or otherwise at law or in equity arising in connection with a Respondents or Prospective Respondent's participation in the Invitation to Quote Process is, to the extent that it is not expressly excluded, limited to an amount of nil.

3.2 Exclusion of Consequential Loss

The Principal is not liable for any Consequential Loss, howsoever caused (including by the negligence of the Principal), suffered or incurred by any Respondent or Prospective Respondent, whether or not the Principal knew or should have known of the possibility of such damage or that such damage was otherwise foreseeable.

3.3 Release and indemnity

- (a) Each Respondent and Prospective Respondent releases and indemnifies the Principal, its Councillors, employees, agents and contractors from and against all claims (including for negligence or misrepresentation by the Principal) arising out of or in connection with the provision of, or the purported reliance upon, or use of, any information (including in the Invitation to Quote Documents) provided by or on behalf of the Principal in connection with the Invitation to Quote Process.
- (b) For the purpose of obtaining the benefit of the indemnity granted under clause [3.3\(a\)](#), The Principal:

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- i. acts on its own behalf and as the agent for each of the Principal's the Councillors, employees, agents and contractors; and
 - ii. communicates assent by each of its the Councillors, employees, agents and contractors to the promise of indemnification made by the Respondent and Prospective Respondent under clause 3.3(a) in respect of each of those persons.
- (c) It is not necessary for the Principal, its Councillors, employees, agents or contractors to suffer or incur any loss or damage prior to making a claim under the indemnity in clause [3.3\(a\)](#).
- (d) Clauses [3.1](#), [3.2](#) and [3.3](#) survive the expiry or termination of any contract that forms between a Prospective Respondent and the Principal or a Respondent and the Principal under these Invitation to Quote Process Terms.

3.4 Variations

- (a) Without limiting any other rights or remedies of the Principal, it may, in its absolute discretion, at any time by notice to each Prospective Respondent and Respondent, do one or more of the following:
 - i. vary, suspend or terminate the Invitation to Quote Process;
 - ii. vary the terms of the Invitation to Quote Process Terms;
 - iii. direct each Respondent (as a result of a variation to the Invitation to Quote Process Terms) to submit revised pricing and rates; or
 - iv. extend the Closing Date.
- (b) All variations to the Invitation to Quote Process Terms will be issued by the Principal in the form of a written Notice to Respondents (which must refer to this clause [3.4](#)) to these Invitation to Quote Process Terms (Notice to Respondents), and will form part of the terms of the Invitation to Quote Process Terms on and from the date specified in the Notice to Respondents, or if no date is specified, immediately.
- (c) The Respondent may not do any of the things that the Principal is permitted to do under clause [3.4\(a\)](#) without the prior written consent of the Principal.

3.5 Exclusion from Invitation to Quote Process

- (a) The Principal may, in its absolute discretion, without prejudice to any other rights or remedies of the Principal, exclude a Respondent from continued participation in the Invitation to Quote Process and may cease to consider any Quote submitted by the Respondent if the Principal determines that the Respondent or any of its Associates has failed to comply with a material requirement of these Invitation to Quote Process Terms (but, for the avoidance of doubt, the Principal is not obliged to do so).
- (b) The Principal may, in its absolute discretion, waive some or all of the obligations of a Respondent under the Invitation to Quote Process Terms.

3.6 No joint bids

- (c) Each Quote must be submitted by a single Respondent only. Quotes by joint Respondents are not permitted and will not be accepted by the Principal.

4. RESPONDENT'S OBLIGATIONS

4.1 Respondent's warranties

- (a) By lodging a Quote, a Respondent represents and warrants, and it is a condition of these Invitation to Quote Process Terms, that:
 - i. each of the matters set out in the Respondent's Quote are true, accurate, complete and not misleading or deceptive;

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- ii. it has not relied and will not rely upon the Invitation to Quote Process Terms or any Invitation to Quote Documents as being accurate, adequate, suitable or complete for the purposes of enabling it to supply the Service;
 - iii. it has not relied, and will not rely, on information provided by or on behalf of the Principal without independently verifying such information and independently satisfying itself as to the accuracy, adequacy, suitability or correctness of such information;
 - iv. it has satisfied itself as to the local conditions, environment and facilities that may impact on its ability to supply the Service;
 - v. it has examined, and will examine, all information relevant to the risks, contingencies and other circumstances having an effect on its Quote and the supply of the Service;
 - vi. it has fully informed itself of the nature of the obligations to be performed under the relevant Service Contract, including the labour, plant, materials, mechanical plant and other resources necessary, suitable or desirable to perform the obligations under the relevant Service Contract;
 - vii. it has satisfied itself as to the correctness and sufficiency of its Quote for the performance of the obligations under the relevant Service Contract and that its rates and prices include compliance with all its obligations under the relevant Service Contract and of all matters and things necessary for the due and proper performance of the relevant Service Contract in accordance with the terms of the relevant Service Contract; and
 - viii. it has carried out its own investigations as to the feasibility of its Quote and relied on those investigations.
- (b) The Respondent acknowledges and agrees that the Principal will rely upon the representations made and warranties given in clause [4.1\(a\)](#) in considering any Quote of the Respondent and in considering whether to enter into the Service Contract with the Respondent.
 - (c) Failure by a Respondent to do any or all of the things it represents and/or warrants to have done, or will do, will not relieve the Respondent of its obligations to perform and complete the relevant Service Contract in accordance with its terms.
 - (d) The Principal does not represent or warrant that any of the information provided by the Principal as Supporting Documentation in schedule 5 of the Invitation to Quote (Supporting Documentation), or as part of the Invitation to Quote Process, is complete or accurate.

4.2 Expenditure of money

Each Respondent and Prospective Respondent:

- (a) expends money, makes commitments and incurs liabilities in responding to these Invitation to Quote Process Terms at its own risk and expense; and
- (b) has no claim against the Principal for any of the expenses, commitments or liabilities referred to in clause [4.2\(a\)](#).

4.3 Information or clarification

- (a) Any requests for information or clarification regarding the Invitation to Quote Process or Contract Documents must, in the first instance, be directed to the Contract Administrator.

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- (b) The Principal will not accept any requests for information or clarification on or after the date that is 72 hours prior to Closing Date.
- (c) Responses to any requests for information or clarification will be emailed to all Prospective Respondents.
- (d) No response or statement made by the Contract Administrator or any other member of the Principal should be construed as modifying these Invitation to Quote Process Terms or any other Invitation to Quote Documents, unless expressly stated otherwise in an Notice to Respondents.
- (e) Any information provided to the Respondent by or on behalf of the Principal, including in these Invitation to Quote Process Terms, is:
 - i. provided for the convenience of the Respondent only and unless expressly incorporated into the Invitation to Quote Process Terms, does not form part of the Invitation to Quote Process Terms; and
 - ii. not warranted or held out by the Principal as accurate, adequate, suitable, complete or correct.
- (f) If a Respondent or a Prospective Respondent requests information or clarification from the Principal on any part of these Invitation to Quote Process Terms:
 - i. the Respondent must direct its enquiries in writing to the Contract Administrator;
 - ii. the Principal is not bound by any information or clarification provided orally (including at the Information Session) or in writing; and
 - iii. the Respondent or Prospective Respondent consents to the Principal disclosing any request for information or clarification made by the Respondent or Prospective Respondent, together with the written response of the Principal to all other Respondents and Prospective Respondents.
- (g) In addition to the Information Session, the Principal may decide prior to the Closing Date to hold briefing and clarification sessions for Prospective Respondents (whether separately or together) at times and venues specified by the Principal.

5. QUOTES

5.1 Content of Quotes

- (a) Each Quote must:
 - i. be in legible English;
 - ii. be accompanied by a fully completed Invitation to Quote Response Form properly executed by the Respondent;
 - iii. include all information and documentation required to be provided by these Invitation to Quote Process Terms (including the relevant Required Information);
 - iv. be submitted in the format required by clause [5.2](#); and
 - v. be lodged in accordance with clause [5.3](#).
- (b) If the Invitation to Quote Response Form is executed under power of attorney, the Respondent must submit a certified copy of the deed under which the attorney's authority to execute the Invitation to Quote Response Form is derived.

5.2 Format of Quotes

If a Respondent submits more than one Quote, each Quote must be complete and must not be supplemented by cross-references to information contained in other Quotes or documents.

5.3 Electronic lodgement of Quotes

- (a) The Respondent must lodge one copy of its Quote in the format provided by the Principal (using the template provided by the Principal) via the LG Tender Box.
- (b) Quotes must be:
 - i. clearly marked with the relevant Contract Number; and
 - ii. emailed to the contact provided in the Invitation to Quote Document.
 - iii. No other method of lodging a Quote is acceptable, and Quotes may not be lodged by post, facsimile.
- (c) The Principal will not accept or consider Quotes which are not lodged on or before the Closing Date.

5.4 Conforming Quotes

- (a) A Conforming Quote is one which:
 - iv. is lodged on or before the Closing Date;
 - v. is not lodged on the basis of any condition or qualification;
 - vi. accepts the terms of the relevant Service Contract to which the Quote relates;
 - vii. is not a Quote that is determined to be a Non-conforming Quote under clauses [6.2\(e\)](#) and [13.4\(d\)](#) or any other term of these Invitation to Quote Process Terms which allow the Principal to deem a Quote to be non-conforming, allow the Principal not to review a Quote or cause a Quote to become non-conforming;
 - viii. supplies all information and responses requested by these Invitation to Quote Process Terms;
 - ix. is submitted using the form and format of the Invitation to Quote Response Form;
 - x. complies with requirements, terms and conditions of these Invitation to Quote Process Terms; and
 - xi. is submitted by a Respondent.
- (b) A Non-conforming Quote is one that fails to meet the requirements in clause [5.4\(a\)](#).

5.5 Alternative Quotes

- (a) A Respondent may lodge an Alternative Quote for the Service provided that:
 - i. the Alternative Quote is lodged by the Closing Date; and
 - ii. the Respondent has lodged a Conforming Quote for the Service.

5.6 No public opening

Quotes will not be publicly opened by the Principal.

5.7 Validity period

A Tender is irrevocable for ninety (90) days after the Closing Time and thereafter until withdrawn in writing by the Tenderer or the ITQ process is finalised by the Principal.

5.8 Licence to use

- (a) The documents comprising each Quote become the property of the Principal upon being submitted.
- (b) The Respondent grants the Principal and its Councillors, employees, agents and contractors an irrevocable, perpetual, non-exclusive, free of charge licence (including the right to sublicense) to use and exercise all Intellectual Property Rights in the whole or any part of the Respondent's Quote for any purpose related to the Invitation to Quote Process, including the use, reproduction and modification of the Quote.
- (c) The Respondent represents and warrants, and it is a condition of these Invitation to Quote Process Terms, that:
 - i. it owns or has a right to use the Intellectual Property Rights in its Quote for the purposes of the Invitation to Quote Process;
 - ii. it has the right and authority to grant the licence in clause [5.8\(b\)](#); and
 - iii. the Principal's exercise of the rights granted by the Respondent under clause [5.8\(b\)](#) will not infringe the Intellectual Property Rights or other rights of any third party.
- (d) This clause [5.8](#) survives the expiry or termination of any contract that forms between a Prospective Respondent and the Principal or a Respondent and the Principal under these Invitation to Quote Process Terms.

6. FURTHER INFORMATION AND INVESTIGATIONS

6.1 Further information

- (a) The Principal may seek clarification, amendment and/or improvement of a Quote or require a Respondent to provide additional information concerning any part of its Quote on a case-by-case basis, but is under no obligation to do so, and may decide not to extend such an opportunity to each Respondent.
- (b) The Respondent must respond to a request in accordance with clause [6.1\(a\)](#) within the time specified by the Principal.
- (c) Without limiting clause [6.1\(a\)](#), the Respondent must, if requested by the Principal, give a presentation in relation to the Quote at a time and place specified by the Principal.

6.2 Investigations

- (a) The Principal may conduct independent investigations regarding a Respondent and its Quote, including in relation to the Respondent's:
 - i. commercial structure;
 - ii. financial status;
 - iii. business and credit history;
 - iv. prior contract compliance and performance; and
 - v. criminal records or pending charges of its staff and employees.
- (b) By submitting a Quote, the Respondent:
 - i. consents to such investigations being conducted;
 - ii. agrees to cooperate with any investigations (including an audit of the Respondent's financial status) by the Principal or its agent; and
 - iii. consents to the Principal or its agent contacting and obtaining information about the Respondent from the Respondent or any third

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party that the Principal considers may be able to provide information about the Respondent which is relevant to the evaluation of its Quote.

- (c) Subject to clause [10](#), the Principal is under no obligation to provide the Respondent with details of the results of any investigations.
- (d) If the Principal requests that the Respondent provide any information to the Principal under this clause [6.2](#), the Respondent must provide the information to the Principal in the time reasonably required by the Principal (if any).
- (e) Failure to provide any information to the Principal within the time reasonably required by The Principal may result in the Quote being deemed by the Principal as a Non-conforming Quote by notice to the Respondent.

7. EVALUATION OF QUOTES

7.1 Evaluation

- (a) The Principal will evaluate Conforming Quotes (and any Non-conforming Quotes it notifies a Respondent that it will evaluate) against the Evaluation Criteria and, to the extent they are relevant and applicable to the evaluation process, having regard to the sound contracting principles of the Local Government Act.
- (b) The evaluation of Quotes will be based primarily upon the information provided in the Quotes (as varied in accordance with these Invitation to Quote Process Terms).
- (c) In addition to clause [7.1\(b\)](#), the Principal may, in its absolute discretion, in evaluating Quotes have regard to:
 - i. the Principal's and its advisors' previous experience and dealings with the Respondent;
 - ii. any information received from any referee in relation to the Respondent;
 - iii. any information about a Respondent which is in the public domain; and
 - iv. any information obtained pursuant to investigations carried out in accordance with clause [6.2](#) or which comes to the attention of the Principal or its advisers.
- (d) The Respondent must ensure that its Quote addresses all Evaluation Criteria.

7.2 Negotiations

- (a) The Principal reserves the right to enter into negotiations with one or more Respondents in respect of their Quotes (Negotiations), but is under no obligation to do so, and the Principal need not extend the opportunity to each Respondent.
- (b) The objective of Negotiations with a Respondent is to agree all commercial issues and completely settle the terms of the relevant Service Contract to which the Respondent's Quote relates.
- (c) If the Principal wishes to enter into Negotiations with a Respondent, the Principal may do one or more of the following:
 - i. issue the Respondent with a program and timetable for negotiations together with:
 - ii. redrafts of the relevant Service Contract; and
 - iii. the Principal's comments on the Service Contract submitted by the Respondent;
 - iv. meet and negotiate with the Respondent; and
 - v. require the Respondent to:

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- vi. comply with the Principal's program, timetable, location and format for Negotiations; and
 - vii. meet and negotiate in good faith with the Principal to endeavour to finalise the terms of the Service Contract.
- (d) Unless otherwise stated, the Principal entering into Negotiations with a Respondent does not amount to a rejection of that Respondent's Quote, or the making of a counter offer to that Respondent.
- (e) The Principal may at any time discontinue Negotiations with a Respondent and exercise any of its other rights under these Invitation to Quote Process Terms.

8. VARIATIONS TO QUOTES AND TERMS

- (a) Subject to clause [8\(d\)](#), a Respondent must not vary its Quote unless invited to do so by the Principal.
- (b) The Principal may:
- i. invite one or more Respondents to vary its Quote but has no obligation to do so and need not extend the same opportunity to each Respondent; and
 - ii. accept or reject a variation to a Quote in its absolute discretion.
- (c) Any variations to a Quote which are invited by the Principal (including as a result of a request for clarification, improvement or additional information under clause [6.1](#) or as a result of Negotiations) that are accepted in writing by the Principal, will form part of the Quote as if they were included in the original Quote submitted by the Respondent.
- (d) The Principal may vary the terms of some or all of the Contract Documents by notice to each Prospective Respondent and Respondent prior to the Principal accepting a Quote under clause [9](#), provided that each Respondent notified of such a variation will have a period of 5 Business Days (or such longer period specified by the Principal in its notice) to vary its Quote in response to the variation of the Principal. Nothing in this clause [8\(d\)](#) obliges the Principal to issue any notice to Prospective Respondents or Respondents as a result of Negotiations with a Respondent.

9. ACCEPTANCE OF QUOTES

9.1 Acceptance of Quotes

- (a) The Principal is not bound to accept the lowest price or any Quote.
- (b) The Principal may accept any Quote in whole or in part.
- (c) The Principal may (but is not obliged to) consider any Quote which is a Non-conforming Quote.
- (d) The Principal may invite some or all Respondents to change their Quote in response to a change to the terms of the Invitation to Quote Process Terms documents or a change to the Quote Process.

9.2 Formation of contract

- (a) Notwithstanding that the Principal may advise the Respondent that its Quote has been accepted, no contractual relationship exists or will arise between the Principal and any Respondent in respect of the Service unless and until the Principal informs the Respondent in writing that it has accepted the Respondent's Quote (Acceptance Notice).

10. RIGHT TO INFORMATION (RTI) AND DISCLOSURE

- (a) The RTI Act provides members of the public with a legally enforceable right to access documents held by the Principal.

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- (b) The RTI Act requires that documents be disclosed upon request, unless there are valid grounds under the RTI Act for exempting the documents from disclosure.
- (c) Each Respondent acknowledges and agrees that information provided by the Respondent to the Principal during the Invitation to Quote Process (including Quotes) is potentially subject to disclosure to third parties under the RTI Act.
- (d) If the disclosure of information provided by a Respondent to the Principal during the Invitation to Quote Process (including its Quote) would be of substantial concern to the Respondent, the relevant documents should be stamped "Commercial-in- Confidence", however, the Principal does not warrant or guarantee that that information or documents will not be disclosed in response to an application under the RTI Act.
- (e) The Principal, at its discretion, reserves the right to disclose information regarding the tender (e.g. lump sum pricing) publically to assist Council in transparent decision making without notification.
- (f) This clause [10](#) survives the expiry or termination of any contract that forms between a Prospective Respondent and the Principal or a Respondent and the Principal under these Invitation to Quote Process Terms.

11. PRINCIPAL CONFIDENTIAL INFORMATION

11.1 Duty of confidentiality

- (a) The Respondent must:
 - i. keep confidential all Principal Confidential Information; and
 - ii. not disclose, or allow to be disclosed, any Principal Confidential Information to any person except:
 - a. as required by law;
 - b. if the information is already in the public domain other than as a result of a breach of confidentiality;
 - c. with the prior written consent of the Principal; or
 - d. to an Associate of the Respondent if, and to the extent that, it needs to know the information for the purposes of the Invitation to Quote Process.
- (b) In clauses [11](#) and [12](#), references to "Respondent" includes a Prospective Respondent.

11.2 Use of Principal Confidential Information

The Respondent must ensure that all Principal Confidential Information in the possession or control of the Respondent or any of its Associates is only used for the purpose of the Respondent's involvement in the Invitation to Quote Process and is not used for any other purpose whatsoever.

11.3 Security of confidential information

The Respondent must:

- (a) maintain effective security measures to protect all Principal Confidential Information from unauthorised access, use, copying or disclosure;
- (b) notify the Principal immediately in writing if the Respondent becomes aware of any possible or actual breach of this clause [11](#) and take all reasonable steps required to prevent or stop that breach, at the Respondent's own expense; and

- (c) reasonably assist the Principal in connection with any action or investigation regarding any possible or actual unauthorised disclosure or misuse of Principal Confidential Information.

11.4 Disclosure required by law

- (a) Subject to clause [11.4\(b\)](#), if the Respondent is required to disclose Principal Confidential Information under clause [11.1\(a\)\(ii\)\(A\)](#), the Respondent must:
 - i. first, to the extent practicable, give reasonable notice to and consult with the Principal as to the form and content of the disclosure;
 - iii. disclose only the minimum amount of Principal Confidential Information required to comply with the relevant law or stock exchange requirement; and
 - iv. do whatever is necessary to ensure that the disclosed Principal Confidential Information is treated confidentially.
- (b) The Respondent acknowledges and agrees that the Principal may publish information relating to these Invitation to Quote Process Terms and the Service Contract that it is required to disclose under the Local Government Act and its regulations without the Principal complying with any of the requirements set out in clause [11.4\(a\)](#).

11.5 Disclosure to Associates

- (a) The Respondent must:
 - i. inform each of its Associates to whom Principal Confidential Information is disclosed of the Respondent's obligations under this clause [11](#);
 - ii. ensure that each of its Associates to whom Principal Confidential Information is disclosed strictly observes all of the Respondent's obligations under this clause [11](#) as if these obligations were imposed directly on that Associate; and
 - iii. ensure that no Associate to whom Principal Confidential Information is disclosed does anything which, if done by the Respondent, would breach this clause [11](#).
- (b) The Respondent is liable to the Principal for any breaches of the Respondent's obligations under this clause [11](#) by its Associates.

11.6 Return or destruction

If requested by the Principal, the Respondent must immediately return to the Principal (or if the Principal requests, destroy) all materials containing any of Principal Confidential Information in the Respondent's (or any of its Associates') possession or control.

11.7 Survival

This clause [11](#) survives expiry or termination of any contract that forms between a Prospective Respondent and the Principal or a Respondent and the Principal under these Invitation to Quote Process Terms.

12. RESPONDENT CONFIDENTIAL INFORMATION

- (a) The Respondent may identify to the Principal documents or information that the Respondent considers to be confidential information of the Respondent and may request to the Principal that such documents or information not be published or disclosed.
- (b) The Principal will consider any request from the Respondent under clause [12\(a\)](#) but has no obligation not to publish or disclose any document or information referred to it under clause [12\(a\)](#).

- (c) Where the Principal has previously accepted that information or documentation referred to it under this clause [12](#) will not be published or disclosed, the Principal can, at any time, amend or alter its decision by notice to the Respondent.
- (d) This clause [12](#) survives the expiry or termination of any contract that forms between a Prospective Respondent and the Principal or a Respondent and the Principal under these Invitation to Quote Process Terms.

13. GENERAL

13.1 The Principal's discretion

Unless expressly provided otherwise, any right, power or privilege of the Principal under these Invitation to Quote Process Terms and in relation to the Invitation to Quote Process may be exercised by the Principal:

- (a) in its absolute discretion;
- (b) without giving reasons; and
- (c) without reference to the Respondent.

13.2 Quoted prices

- (a) All prices included in the Quote must be in Australian dollars and be GST exclusive.
- (b) All prices included in the Quote must be prices that are current as at the Closing Date.

13.3 No advertising

The successful Respondent may not publish any information in relation to the award of the Service Contract without the prior written approval of the Principal.

13.4 Competitive neutrality

- (a) Subject to clause [13.4\(b\)](#), a Respondent which:
 - i. is bound to comply with competitive neutrality principles; or
 - ii. is a Government Entity, may submit a Quote.
- (b) Any Respondent contemplated by clause [13.4\(a\)](#) that submits a Quote represents and warrants to the Principal that:
 - i. the Respondent has undertaken proper processes to consider, assess and evaluate applicable principles of competitive neutrality that are relevant to its Quote;
 - ii. its Quote has been completed and submitted on the basis that it complies with the applicable competitive neutrality principles; and
 - iii. if the Principal awards the Service Contract to the Respondent, the performance of that contract by the Respondent in accordance with its terms will not breach applicable principles of competitive neutrality.
- (c) In addition to any other right the Principal has under these Invitation to Quote Process Terms to request information from a Respondent, the Principal may require a Respondent to provide information and documentation to the Principal (including after execution of the applicable Service Contract) to demonstrate compliance by the Respondent with the requirements of this clause [13.4](#), including:
 - i. financial and logistical models;
 - ii. outcomes of community consultation;
 - iii. investigations; and

iv. reports.

- (d) The Respondent must promptly comply with any request made by the Principal under clause [13.4\(c\)](#). If the Respondent does not comply with a request made by the Principal under clause [13.4\(c\)](#), The Principal may determine that the Quote is a Non-conforming Quote by notice to the Respondent.

13.5 No incentives or contact

- (a) A Respondent (including its officers, employees and agents) must not give or offer to the Principal or any the Councillor or employee of the Principal, or to a parent, spouse, child or associate of a the Councillor or employee, any inducement, gift or reward, which could in any way tend to influence the Principal's actions in relation to a Quote.
- (b) If the Principal discovers at any time that a Respondent has breached clause [13.5\(a\)](#), the Principal may decide not to consider that Quote.

13.6 No collusion

The Respondent represents and warrants that the Quote is in all respects an independent Quote and that no collusion has taken place between the Respondent and any other Respondent, Prospective Respondent or interested party in the preparation of the whole or any part of the Quote.

13.7 Conflicts of Interest

- (a) Each Respondent warrants that to the best of its knowledge, as at the date of the Quote, neither the Respondent nor any of its Associates have, or are likely to have, any Conflict of Interest in any matters connected with the Invitation to Quote Process except for those matters nominated by the Respondent in its completed Invitation to Quote Response Form.
- (b) If a Conflict of Interest or risk of Conflict of Interest arises during the Invitation to Quote Process, the Respondent must immediately give notice of the Conflict of Interest, or the risk of it, to the Contract Administrator.

13.8 No canvassing

A Respondent must not engage or communicate with the Principal, its Councillors or its employees in connection with the Invitation to Quote Process or a Quote except:

- (a) as contemplated by this Invitation to Quote Process;
- (b) when making a request for information or clarification under clause [4.3\(f\)](#); or
- (c) in response to a request by the Principal under these Invitation to Quote Process Terms.
- (d) If the Principal discovers at any time that a Respondent has breached this clause [13.8](#) the Principal may decide not to consider that Quote.

13.9 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws applicable in Queensland.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

13.10 Severability

- (a) Subject to clause 13.10(b), if any provision or term of these Invitation to Quote Process Terms is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of these Invitation to Quote Process Terms.
- (b) Clause 13.10(a) does not apply if severing the provision:
 - i. materially alters the:
 - a. scope and nature of these Invitation to Quote Process Terms;
 - b. the relative commercial or financial positions of the parties; or
 - ii. would be contrary to public policy.

13.11 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to these Invitation to Quote Process Terms does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

13.12 Entire agreement

- (a) The Invitation to Quote Process Terms constitutes the entire agreement between the parties as to its subject matter and supersedes all prior agreements, arrangements, memorandum of understandings, representations, warranties, promises, statements, negotiations and letters in respect of its subject matter.
- (b) Each Respondent and Prospective Respondent relies entirely on its own independent appraisal and assessment of all relevant matters and not on any representations or misrepresentations made by the Principal or its agents prior to the formation of or in connection with the contract constituted by the Invitation to Quote Process Terms.
- (c) No oral explanation or information provided by any party to another:
 - i. affects the meaning or interpretation of the Invitation to Quote Process Terms; or
 - ii. constitutes any collateral agreement, warranty or understanding between any of the parties.