

- (i) To demonstrate the Proponent’s financial substance, technical capabilities and resources;
 - (ii) to demonstrate its ability to comply with the terms and conditions of the Contract; and
 - (iii) in relation to anything else relative to the EOI;
 - (d) allow the Principal and its Personnel to inspect any location, facility or equipment the Proponent proposes to use in undertaking the Supply or in connection with the Contract;
 - (e) authorise the Principal and its Personnel (in writing, if required) to contact any referee nominated by the Proponent; and
 - (f) authorise the Principal (in writing, if required) to obtain information about the Proponent, particularly information relevant to the Proponent’s ability to discharge the responsibilities of the Proponent under the Contract, from any third party the Principal considers may be able to provide that information.
- 2.10 The Principal will provide information to Proponent in electronic format only, unless in the case that there is a briefing or Site Inspection, which in that case information may be provided verbally.

3 Proponent’s Responsibilities and Obligations

- 3.1 In submitting its EOI, each Proponent warrants that it has:
- (a) carefully read and considered the Request for EOI and any other information made available by the Principal with respect to the Request for EOI and the EOI Process for the Contract;
 - (b) carefully read and considered all information relevant to the risks, contingencies and other circumstances relevant to the Request for EOI;
 - (c) informed itself of the nature of the obligations it must discharge under the Contract;
 - (d) informed itself of the labour, plant and equipment and other items necessary, suitable or desirable to enable the Proponent to undertake the Supply and discharge its obligations under the Contract;
 - (e) not relied, will not rely and will not allow its Personnel to rely upon the Principal-Supplied Information for any purpose;
 - (f) independently verified any information provided by or on behalf of the Principal (including the Principal-Supplied Information), and satisfied itself that the information is adequate and accurate;
 - (g) conducted an examination of the Site (if any) and its surroundings;
 - (h) satisfied itself that the information in its EOI is accurate and complete;
 - (i) by notice in writing via the Electronic Tender Box forum, advised the Principal of any error, discrepancy, ambiguity, incompleteness, omission, inquiry or other issue arising in connection with the EOI Documents immediately when the Proponent becomes aware of it; and
 - (j) satisfied itself that its EOI complies in all respects with the requirements of these Conditions of EOI.
- 3.2 In evaluating EOIs and determining whom it may shortlist for Stage 2, the Principal will rely upon Proponents having complied with the requirements of Clause 3.1.
- 3.3 Failure to comply with any requirement in Clause 3.1 will not relieve the successful Proponent of any responsibility, including in respect of Stage 2 if the Proponent is shortlisted.
- 3.4 If a Proponent comprises two or more parties (whether as a joint venture, consortium, partnership or any other unincorporated grouping of two or more persons) the obligations and liabilities of those persons is joint and several.
- 3.5 Except to the extent expressly provided by the Request for EOI, the Principal will not be responsible for the payment of, and no Proponent shall have any Claim against the Principal or the Principal’s Personnel for any costs, expenses, losses or other liabilities incurred by the Proponent arising out of or in connection with:
- (a) attending any briefing or Site Inspection under Clauses 2 and 3.7;
 - (b) preparing and lodging its EOI (including the provision of further information at the Principal’s request);
 - (c) participating in any post EOI activities (including participation in Stage 2, if relevant);
 - (d) the Principal exercising in its absolute discretion any discretion or right it has under these Conditions of EOI (including terminating the EOI Process); and
 - (e) any of the matters or things relevant to the Contract in respect of which the Proponent takes the risk of or must satisfy itself under the Request for EOI.
- 3.6 In preparing and lodging its EOI (including accessing the Site for any reason), the Proponent must comply with all applicable laws and legal requirements.
- 3.7 If a Site Inspection is applicable for this EOI, every Proponent must:
- (a) if the Site Inspection is mandatory, attend the Site at the time and date set out in the Invitation for EOI for the purposes of carrying out such inspection or investigation of the Site as the Principal requires;
 - (b) not access the Site at any time unless accompanied by a representative of the Principal, or prior approval is sought from the Principal; and

- (c) comply with any conditions imposed by the Principal in connection with the Proponent’s access to the Site.

4 Formal Requirements

- 4.1 The EOI must:
- (a) be submitted in electronic format via the Electronic Tender Box (any EOI received in any other manner may not be considered);
 - (b) be submitted in English;
 - (c) include in the uploaded documentation, one (1) electronic copy of the EOI Response Form duly executed in a manner that binds the Proponent in PDF format; and
 - (d) if a brochure, pamphlet or the like forms part of the EOI, include a scanned copy of the brochure, pamphlet or the like as a attachments within the EOI Response Forms.
- 4.2 The EOI Response Forms must be fully completed, and include all supporting documents and materials required by both these Conditions of EOI and the EOI Response Forms.
- 4.3 The Proponent must ensure that the font, questions, numbering and headings of each response form are not altered in any way, except with the prior consent of the Principal.
- 4.4 EOIs that cannot be effectively evaluated because they are incomplete or corrupt may be excluded from further consideration. The Principal takes no responsibility for any documents or files which become incomplete or corrupt during transmission or upload into the Electronic Tender Box.
- 4.5 Offers submitted to the Principal which direct the Principal to another host website for collection, review or evaluation of documents may be excluded from further consideration.
- 4.6 The EOI Response Forms must contain the Proponent’s:
- (a) full name; and
 - (b) Australian Business Number; and
 - (c) address and email address for the service of notices.
- 4.7 If the Proponent operates as a firm, the EOI Response Forms must contain:
- (a) the full names and addresses of each member of the firm;
 - (b) the business name under which the firm trades;
 - (c) the firm’s address and email address for the service of notices; and
 - (d) the firm’s Australian Business Number.
- 4.8 If the Proponent is a corporation, the EOI Response Forms must contain details of the corporation’s:
- (a) name;
 - (b) business name (if applicable);
 - (c) Australian Business Number;
 - (d) registered office;
 - (e) address and email address for the service of notices; and
 - (f) the name, telephone number and address (if different from the address for service of notices) of a natural person who is authorised by the corporation to represent it in relation to the EOI.
- 4.9 If the Proponent is a consortium or a joint venture, the EOI Response Forms must contain details of:
- (a) the name of each member;
 - (b) the structure of the consortium or joint venture, including the proposed managerial structure;
 - (c) the representative of the consortium or joint venture who has authority to bind the Proponent and each of the persons in the consortium or joint venture;
 - (d) the role to be played by each member in complying with the terms and conditions of the Contract; and
 - (e) in the case of a consortium, the member who is to be principal contractor on behalf of the consortium.
- 4.10 The EOI Response Forms must be duly executed in a manner that binds:
- (a) if the EOI is submitted by one (1) Proponent — the Proponent; or
 - (b) if the EOI is submitted by more than one (1) Proponent — each Proponent.
- 4.11 Any prices or monetary figures in the EOI Response Forms must be:
- (a) in Australian dollars; and
 - (b) unless otherwise specified in the EOI Response Forms, GST exclusive.
- 4.12 It is recommended that the Proponent:
- (a) number consecutively each page of its EOI; and
 - (b) include an index in the EOI.
- 4.13 The identity of the Proponent is fundamental to the Principal. For the purposes of a Proponent’s EOI, the Proponent is the person, persons, corporation or corporations:
- (a) who is named as the Proponent in the EOI Response Forms; and
 - (b) who has duly executed the EOI Response Forms in a manner that binds the Proponent.
- 4.14 The Principal is not obliged to shortlist or consider an EOI that does not comply with this Clause 4.

5 Alternative Proposals

- 5.1 Unless stated otherwise in the Invitation for EOI, alternative proposals may be submitted in addition to conforming EOI. The Principal is not required to consider alternative proposals (and at the time of the Invitation for EOI has no intention of doing so) where the Invitation for EOI provides that alternative proposals are not to be submitted.
- 5.2 An alternative proposal must:
- clearly set out the benefits of the proposal and how it differs from the conforming EOI; and
 - not constitute a substantial variation but satisfy the basic commercial and performance objectives, technical and legal requirements.
- 5.3 Each alternative proposal must expressly state in detail the extent to which the EOI:
- does not comply in any respect with the requirements of the EOI Documents (including these Conditions of EOI) or relies upon any assumptions in relation to the Contract, the Site, the Supply or the EOI Documents;
 - is for the provision of the Supply on terms which differ from the terms of the EOI Documents (including the Contract); and
 - will benefit or disadvantage the Principal by the alternative proposal (including the effect on prices),
- and, except to the extent expressly stated in the EOI, the EOI shall be deemed to be for the provision of the Supply on the terms of the EOI Documents (including the Contract).
- 5.4 If an alternative proposal and a conforming EOI are submitted from the same Proponent, they must be submitted on a separate EOI Response Forms.
- 5.5 Otherwise conforming EOIs may be deemed as an alternative proposal if the Proponent has failed to supply any of the information required by these Conditions of EOI, does not comply with any of the requirements of the Conditions of EOI or has been lodged subject to any departures, conditions or qualifications.
- 5.6 If more than one conforming EOI is lodged, each EOI must be accompanied by a clear summary of all points of difference between each conforming EOI.
- 5.7 The Principal will not be obliged:
- to consider any EOI that does not comply with the requirements of these Conditions of EOI; or
 - to provide reasons for a decision not to consider any EOI that does not comply with the requirements of these Conditions of EOI.
- 5.8 If a Proponent lodges an alternative proposal without lodging a conforming EOI or lodges an alternative proposal where the Invitation for EOI provides alternative proposals are not to be submitted the Principal may, in its sole and unfettered discretion:
- refuse to consider the alternative proposal; or
 - commence to consider the alternative proposal, and to do all of the things described in Clause 9, but subsequently cease to consider it at any time.
- 5.9 If the Proponent proposes any deviations to the Request for EOI, the Proponent must provide sufficient information in the relevant section of the EOI Response Forms to permit evaluation of the proposed deviations including detailed reasons why the deviation is sought by the Proponent and the Proponent's alternative drafting (if applicable).
- 5.10 An EOI with proposed deviations may be deemed an alternative proposal.
- 5.11 Acceptance of a deviation will be at the sole and unfettered discretion of the Principal, as evidenced in any Contract entered into by the Principal and Proponent.

6 Lodgement of an EOI

- 6.1 EOIs must be submitted, and will only be accepted by the Principal if submitted, in electronic format via the Electronic Tender Box before the Closing Time.
- 6.2 Any difficulty uploading should be urgently reported to the Electronic Tender Box helpline. The Principal is not obliged to accept EOIs that are late due to technical difficulties.
- 6.3 Failure to comply with the requirements set out in Clause 6.1 may result in the EOI be excluded from any evaluation.
- 6.4 Where a Proponent lodges an alternative proposal, the Proponent must do so in accordance with Clause 5.
- 6.5 The Principal may extend the Closing Time in its sole and unfettered discretion, before the closing of EOIs.
- 6.6 The Principal will not accept late EOIs. The Electronic Tender Box will automatically close at the Closing Time, and submissions will not be accepted in any other method.
- 6.7 A Proponent must not alter the EOI Response Forms unless required by these Conditions of EOI.
- 6.8 Each submission constitutes an EOI by the Proponent to the Principal to perform the Supply required under, and otherwise to satisfy the

requirements of, the Invitation for EOI on the terms and conditions of the Contract.

- 6.10 In submitting its EOI, the Proponent acknowledges and agrees that all details submitted in the EOI Response Forms may be validated by the Principal during or after the EOI Process.

7 Insurances and licensing

- 7.1 In submitting its EOI, the Proponent acknowledges and agrees that the insurance policies outlined in the Contract must, at the Proponent's expense, be effected and maintained for the life of the Contract and any applicable warranty period that may apply as outlined in the Contract.
- 7.2 Where any part of the Supply under a Contract is such that the *Queensland Building and Construction Commission Act 1991* (Qld), or other legislation, requires the Proponent and/or proposed subcontractors to be licensed or registered, the Proponent must submit evidence of the Proponent's licensing or registration in the EOI Response Forms and, to the extent the Proponent has not obtained all licenses and registrations before it submits its EOI, a list of all outstanding licenses and registrations which will be obtained, if the Proponent becomes the successful Proponent, before entering into any Contract with the Principal.
- 7.3 If, at the time of submitting its EOI, the Proponent does not have the requested licenses, registration or insurance cover or to the specified amount, the Proponent must, without limiting this Clause 7, indicate in the EOI Response Forms its willingness and ability to effect such licenses, registrations or insurances at its own expense.

8 Opening of EOIs

- 8.1 EOIs will be opened after the Closing Time.
- 8.2 EOIs will not be opened publicly.

9 EOI Evaluation Process

- 9.1 Without limiting the criteria and weightings the Principal may apply in evaluating EOIs received, the Principal will have regard to the sound contracting principles in section 104 of the *Local Government Act 2009* (Qld), namely:
- value for money;
 - open and effective competition;
 - the development of competitive local business and industry;
 - environmental protection; and
 - ethical behaviour and fair dealing.
- 9.2 Each EOI will be evaluated using the information provided in the EOI Response Forms without limiting the rights to the Principal to use any other information available to the Principal.
- 9.3 If an EOI Response Form for an EOI is not fully completed or does not include all supporting documents and materials required by these Conditions of EOI or the EOI Response Forms, the EOI may be rejected.
- 9.4 In evaluating EOIs, the Principal may:
- require presentations from Proponents;
 - conduct interviews with Proponent's staff and subcontractors;
 - contact Proponents' referees;
 - negotiate with any number of Proponents;
 - investigate a Proponent's structure and management, and that of any relevant subsidiary or related corporation;
 - obtain such other information it requires and make its own assessment of the Proponent's ability to comply with the terms and conditions of the Contract and any pricing provided; and
 - verify that the Proponent holds all necessary permits, licences, approvals and certifications necessary to enable it lawfully to comply with the terms and conditions of the Contract.
- 9.5 Qualitative criteria for the Request for EOI are specified in the Invitation for EOI. The qualitative criteria may be weighted to indicate the relative degree of importance that the Principal places on the technical aspects of the Supply. Each Proponent must address each of the qualitative criteria specified in the EOI Response Forms. If a Proponent fails to address any of the qualitative criteria in the EOI Response Forms, its EOI may be regarded as an alternative proposal and may be rejected.
- 9.6 Irrespective of whether it is stipulated as being part of the evaluation process, evaluating EOIs may also include reference checks, financial viability checks, credit checks, company searches and other relevant checks as necessary including reference to any publically available materials and any other basis for evaluation that the Principal sees fit to apply.
- 9.7 The Principal may obtain information about the Proponent relevant to the evaluation criteria that may be held by any Government Department or Instrumentality and take the information into account in assessing the EOI.
- 9.8 Each Proponent must give the Principal any cooperation and assistance reasonably requested of the Proponent to facilitate consideration of its EOI.

10 Clarifications and Variations

- 10.1 The Principal may issue to Proponents no later than four (4) Business Days before the Closing Time:
- additional information; and
 - information clarifying or correcting information previously provided, to assist it in preparing its EOIs.
- 10.2 If the Principal issues information to Proponents under Clause 10.1, each Proponent must take the information into account in the preparation of its EOI.
- 10.3 After the Closing Time, the Principal may (provided that no competitive advantage is offered to an individual Proponent):
- request clarification or further information from any Proponent; and
 - negotiate with one or more Proponents upon any aspect of its EOI without any obligation to notify other Proponents that it is doing so.

11 Confidentiality

- 11.1 The Proponent:
- acknowledges that the Confidential Information is sensitive and valuable, and will remain at all times the property of the Principal;
 - must not use the Confidential Information for any purpose other than preparing its EOI;
 - must not copy any material comprising or containing Confidential Information, other than where (and then only to the extent that) copying is necessary to enable it to prepare its EOI;
 - must allow access to the Confidential Information by Relevant Persons only to the extent necessary to enable the EOI to be prepared; and
 - must obtain the Principal's written consent before disclosing Confidential Information to a person other than a Relevant Person.
- 11.2 The consent of the Principal to disclosure of the Confidential Information by the Proponent may be given or withheld on such terms and conditions as the Principal considers appropriate.
- 11.3 The Proponent's obligation under this Clause 11 continues after closure of EOIs, the shortlisting of any EOIs, undertaking and completion of Stage 2 and any award of Contract.
- 11.4 The Principal reserves the right to retrieve from a Relevant Person any Confidential Information held by that person.
- 11.5 Clause 11.4 is subject to the Principal having given written notice to the Proponent in writing that the Relevant Person is to be denied access to the Confidential Information.
- 11.6 Failure or delay by the Principal in enforcing strict compliance with this Clause 11 or pursuing a remedy under this Clause 11 will not constitute a waiver or implied variation of the entitlement or remedy.
- 11.7 This Clause 11 will not apply to an item of Confidential Information where the Proponent can establish that:
- the item has been transferred to the public domain through no fault of the Proponent;
 - the item was already in the Proponent's possession when it was supplied or made available by the Principal and not acquired directly or indirectly from the Principal; or
 - it has received from the Principal written notification that the Principal no longer requires the Proponent to keep the item confidential.

12 Acceptance of EOI

- 12.1 The Principal is not obliged to shortlist any EOI.
- 12.2 Unless the Principal expressly agrees otherwise, no EOI shall be taken to be shortlisted until the Principal notifies the Proponent in writing that its EOI has been shortlisted.
- 12.3 Other than this EOI Process, no contract will come into force between the Proponent and the Principal unless and until the Proponent proceeds to Stage 2 and ultimately executes the Contract with the Principal.

13 Right to Information and Disclosure

- 13.1 The *Right to Information Act 2009* (Qld) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including Local Governments).
- 13.2 The *Right to Information Act 2009* (Qld) requires that documents be disclosed upon request, unless the documents are exempt or, on balance, disclosure is contrary to the public interest.
- 13.3 Information provided by the Proponent is potentially subject to disclosure to third parties pursuant to the *Right to Information Act 2009* (Qld).
- 13.4 If disclosure under the *Right to Information Act 2009* (Qld), or general disclosure of information provided by the Proponent, would be of substantial concern to the Proponent, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, including Personal Information, this should be indicated by the Proponent in its EOI. The Principal cannot guarantee that any information provided by the Proponent

will be protected from disclosure under the *Right to Information Act 2009* (Qld).

- 13.5 The Proponent must familiarise itself with the relevant provisions of the *Right to Information Act 2009* (Qld) dealing with the requirements for disclosure of information by agencies, and the grounds on which access to information may be refused.
- 13.6 The Principal accepts no responsibility for the accuracy or adequacy of any information it provides to Proponents concerning the content or effect of the *Right to Information Act 2009* (Qld).
- 13.7 The Principal reserves the right to disclose, by publication by means of media of its choosing upon award of any contract details of the name and address of the Proponent, a description of the Supply, the commencement date of the Contract and the price or value.
- 13.8 Without limiting Clause 13.7, the Proponent acknowledges that if section 237 of the *Local Government Regulation 2012* (Qld) applies to a Contract, the Principal will be required to disclose the information required by that section concerning the Contract.
- 13.9 The Principal will be solely responsible for all media communications in respect to the Request for EOI, the EOI Process, Stage 2 and the subsequent award of any Contract. A Proponent must not issue any advertisement, information, publication, document or article for publication or any statement to the media concerning the Request for EOI, the EOI Process, Stage 2 or award of any Contract without the consent of the Principal. The Proponent must refer to the Principal any media enquiries concerning the Request for EOI or the EOI Process.

14 Ownership of EOIs

- 14.1 Each EOI Response Form (including all supporting documentation and materials submitted by a Proponent as part of, or in support of, an EOI) becomes the property of the Principal on submission and will not be returned to the Proponent.
- 14.2 However, the Proponent shall retain copyright and other Intellectual Property Rights in respect of the EOI except to the extent specified in the Contract.
- 14.3 The Proponent licences the Principal and the Principal's Personnel to copy, adapt, amend, disclose or do anything else necessary (in the Principal's sole and unfettered discretion) to all material (including that which contains Intellectual Property Rights of the Proponent or other persons) contained in its EOI for the purpose of the EOI, including evaluation of the EOI, performing obligations and exercising rights and discretions of the Principal under the Request for EOI, undertaking Stage 2 with the shortlisted Proponents or negotiating a potential Contract with the successful Proponent.

15 Information Privacy

- 15.1 The Proponent is to comply with the *Information Privacy Act 2009* (Qld).
- 15.2 By submitting an EOI, the Proponent warrants that it has obtained the consent of each individual whose Personal Information is included in the EOI for:
- the inclusion of their Personal Information in the EOI;
 - the use of the Personal Information by the Principal for the purpose of evaluating and awarding the EOI; and
 - the disclosure of the Personal Information to other parties (including professional advisors) as may be involved in assisting the Principal with the evaluation of the EOI.
- 15.3 The Proponent must indemnify the Principal against any Claim, damage or loss (including legal costs and expenses) that the Principal may incur arising out of or in connection with a breach by the Proponent of the warranty in Clause 15.2.
- 15.4 Any Personal Information exchanged between the Proponent and the Principal must be dealt with in accordance with the *Information Privacy Act 2009* (Qld).
- 15.5 The Proponent must immediately notify the Principal upon becoming aware of any breach of this Clause 15.
- 15.6 This clause survives the expiry or termination of the Request for EOI.

16 Principal's Limitation of Liability

- 16.1 Subject to Clause 16.2, the Proponent accepts all risk and cost in relation to it and its Personnel's participation in any aspect of the EOI Process (including the performance of all obligations under these Conditions of EOI), or other process derived from the Request for EOI.
- 16.2 To the maximum extent permitted by law, the maximum aggregate liability of the Principal to the Proponent for any breach of these Conditions of EOI or any other act, default or omission of the Principal or its Personnel (including negligence, breach of any statute or any other duty or obligation in equity or at law), irrespective of how serious the breach or how important the term that is breached, is limited to \$10. This Clause 16.2 survives the expiry or termination (for any reason) of the Request for EOI.

- 16.3 Except for the limited extent of liability under Clause 16.2, and without limiting any other provision of these Conditions of EOI, the Proponent:
- (a) releases the Principal and its Personnel (**Released Persons**) from; and
 - (b) indemnifies the Released Persons against, any Claim of the Proponent or its Personnel arising out of or in connection with:
 - (c) the information provided to the Proponent by or on behalf of the Principal (including the Principal-Supplied Information);
 - (d) the matters described in Clause 2.7; and
 - (e) the acts, defaults or omissions of any of:
 - (i) the Released Persons (including the Principal, exercising any rights or discretions, or taking any action as a result of the acts, defaults or omissions of any person, including third parties);
 - (ii) the Proponent; and
 - (iii) the Proponent's Personnel,
 arising out of or in connection with:
 - (f) these Conditions of EOI or the information provided to the Proponent by or on behalf of the Principal;
 - (g) the EOI Process or any other process derived from these Conditions of EOI; or
 - (h) the matters described in Clause 2.7,
- and this Clause 16 may be pleaded by the Released Persons as a bar to any proceedings commenced by the Proponent against the Released Persons in relation to the things described in this Clause 16. This clause survives the expiry or termination (for any reason) of these Conditions of EOI.
- 16.4 The Proponent indemnifies the Released Persons from and against all expenses (including legal fees on an indemnity basis and expert's fees), damages and losses suffered or incurred by the Released Persons in relation to:
- (a) the Proponent's breach of Clauses 17, 18 and 19; and
 - (b) the Released Persons exercising its rights under the paragraph above or the Released Persons defending any proceedings relating to the exercise of its rights under the paragraph above.

17 Collusive EOI

- 17.1 In submitting its EOI, the Proponent warrants to the Principal that, except as expressly disclosed in EOI Response Forms:
- (a) the EOI was not prepared with any consultation, communication, contract, arrangement or understanding with any competitor (including any other Proponents) regarding:
 - (i) price or value;
 - (ii) methods, factors or formulae used to calculate the price or value;
 - (iii) the intention or decision to submit or not to submit an EOI;
 - (iv) the submission of an alternative proposal;
 - (v) the quality, quantity, Invitation for EOIs or delivery particulars of the Supply to which the Request for EOI or EOI relates; and
 - (vi) the terms of its EOI or a competitor's EOI; and
 - (b) it has not, and will not during the EOI Process:
 - (i) attempt to discuss the EOI Process, or obtain any information regarding the EOI Process, from any Personnel of the Principal other than the Contact Person, except to the extent that these Conditions of EOI, expressly allows otherwise;
 - (ii) enter into any contract, arrangement or understanding with any other Proponent or any trade, industry or other association to the effect that the Proponent, if its EOI is successful, will confer any benefit on any other person;
 - (iii) use any information in preparing its EOI that it or its Personnel have obtained unlawfully;
 - (iv) provided any benefit (including money) directly or indirectly to, or entered into any contract, arrangement or understanding to provide any benefit (including money) directly or indirectly to any competitor (including any other Proponent) relating in any way to the Request for EOI or EOI;
 - (v) received any such benefit directly or indirectly, or entered into any contract, arrangement or understanding to receive any such benefit directly or indirectly from any competitor (including any other Proponent) relating in any way to the Request for EOI or EOI;
 - (vi) engage in any conduct in relation to these Conditions of EOI or the EOI Process that is misleading or deceptive; or
 - (vii) consulted, communicated or entered into any contract, arrangement or understanding to provide any benefit (including money), whether directly or indirectly, to a trade, industry or other association (above the published standard fee) relating in any way to the Request for EOI or EOI; and
 - (viii) the Proponent and all corporations and persons associated with the EOI, including directors and senior management, are not and have never been subject to proceedings relating to anti-competitive conduct in Australia or overseas.

- 17.2 The Principal reserves the right to:
- (a) report suspected collusive or anti-competitive conduct on the part of a Proponent to the appropriate authority; and
 - (b) provide the authority with any relevant information about each of the EOIs of the Proponent and the conduct of the Proponent in relation to the EOI of the Proponent.

18 Conflict Of Interest

- 18.1 A Proponent must not, and must ensure that its Personnel do not, place themselves in a position that may or does give rise to an actual, potential or perceived conflict of interest between the interests of the Principal and the Proponent's interest during the EOI Process.
- 18.2 If during the EOI Process a conflict of interest arises, or appears likely to arise, the Proponent must notify the Principal immediately in writing and take such steps as the Principal may reasonably require to resolve or otherwise deal with the conflict. If the Proponent fails to notify the Principal or is unable or unwilling to resolve or deal with the conflict as required, the EOI may be excluded from further consideration.

19 Inducement, Coercion and Improper Assistance

- 19.1 The Proponent (including its Personnel) must not:
- (a) offer any form of inducement or reward to a Councillor of the Principal or the Principal's Personnel, exhibit undue pressure on (including any duress) or otherwise attempt to influence or persuade the Principal or its Personnel in connection with this EOI Process or Stage 2 including the evaluation of EOIs or tenders or the award of a Contract; and
 - (b) solicit any of the Principal's Personnel to enter into the employment of either the Proponent or its Personnel, or contract with the Proponent or its Personnel, for the Supply.
- 19.2 The Principal may exclude an EOI from further consideration where the Principal considers that it has been compiled:
- (a) with the Improper Assistance of current or former Personnel of the Principal;
 - (b) with the utilisation of information unlawfully obtained;
 - (c) in breach of an obligation of confidentiality of the Principal; or
 - (d) contrary to these Conditions of the EOI.

20 Principal Discretions

- 20.1 Any right, discretion, power, assessment, determination or decision that the Principal has under or in connection with these Conditions of EOI may be exercised or made:
- (a) in its sole and unfettered discretion (without being under any obligation to do so);
 - (b) conditionally or unconditionally;
 - (c) without being required to give reasons; and
 - (d) without the need to act for the benefit of the Proponent.
- 20.2 Without limiting its rights or discretions under these Conditions of EOI or otherwise at law, the Principal may at any time do any of the following:
- (a) terminate or suspend the EOI Process at any time before entering into the Contract, whether before, on or after the Closing Time by notice in writing to the Proponents and either:
 - (i) commence a new EOI Process for the Supply after terminating this EOI Process; or
 - (ii) carry out all or any part of the Supply in a manner that the Principal sees fit, either itself or by engaging another to do so after terminating this EOI Process;
 - (b) before the Closing Time, issue to all Proponents any addendum (including in response to an EOI);
 - (c) carry out any other procurement process for the Supply;
 - (d) accept portions of the EOI, and of any other EOI;
 - (e) carry out any part of the Supply itself or have other persons carry out some or all of the Supply whether or not they were invited to, or did, submit an EOI;
 - (f) cease negotiations or discussions with any Proponent at any time;
 - (g) pre-qualify, shortlist or proceed to negotiate with one or more Proponents or other persons, or enter into discussions with one or more Proponents or other persons, in respect of the Supply, and without any obligation to notify other Proponents that it is so proceeding;
 - (h) consider or shortlist, or refuse to consider or shortlist, any EOI received (whether or not a conforming EOI or an alternative proposal), if the Proponent has failed to comply with these Conditions of EOI or EOI Process;
 - (i) seek and consider, or not consider, additional EOIs from (on the same or different terms), or re-offer the Supply with, all or any of the Proponents who have submitted an EOI, or any other person (whether or not they were invited to submit or did submit an EOI);
 - (j) provide additional information to any or all Proponents;

- (k) by notice, change any of the Request for EOI, the EOI Process, the Supply specified in the Invitation for EOI or any other aspect of the Request for EOI in any way; and
- (l) before the end of the EOI Process:
 - (i) invite any other person to participate as a Proponent in the EOI Process; or
 - (ii) accept a substitution of, withdrawal of, or addition to any of the entities comprising a Proponent, with the approved entities together comprising the Proponent for the purpose of the Request for EOI.

20.3 Despite anything in the Request for EOI to the contrary:

- (a) the Principal is not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other government agency in the proper exercise and performance of any of its executive or statutory rights or duties;
- (b) nothing in the Request for EOI has the effect of constraining the Principal or placing any fetter on its discretion to exercise or not to exercise any of its executive or statutory rights or duties; and
- (c) each Proponent will not be entitled to make any Claim against the Principal relating to any exercise or failure of the Principal to exercise its executive or statutory rights or duties.

21 General

- 21.1 Any EOI submitted in response to the Request for EOI will be governed by and construed in accordance with the laws of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland.
- 21.2 The Request for EOI supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.
- 21.3 To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, has no effect except to the extent expressly set out or incorporated by reference in the Request for EOI.
- 21.4 A right under the Request for EOI may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.
- 21.5 A clause or part of a clause of the Request for EOI that is illegal or unenforceable may be severed from the Request for EOI and the remaining clauses or parts of the clause of the Request for EOI continue in force.
- 21.6 The Principal need not incur any expense before enforcing an indemnity under the Request for EOI.

22 Legal relationship

- 22.1 The Principal's obligations to the Proponent in relation to the Invitation for EOI, these Conditions of EOI and the EOI Process generally:
 - (a) are limited to those expressly set out in the Invitation for EOI and these Conditions of EOI; and
 - (b) exclude (to the maximum extent permitted by law) any obligations which may otherwise be implied or imposed on the Principal under contract, law, in equity, by statute or otherwise.
- 22.2 The Invitation for EOI and these Conditions of EOI apply to all acts and omissions by or on behalf of the Proponent in relation to the EOI Process before, on and after the date that it submits its EOI.
- 22.3 Except for those provisions of the Invitation for EOI and Conditions of EOI that are stated to survive termination, or by implication survive termination, the Proponent will be bound by the Invitation for EOI and Conditions of EOI until the earlier of the date that:
 - (a) subject to paragraphs (b) and (c), the Principal terminates the EOI Process;
 - (b) the conclusion of all processes that the Principal undertakes to engage the Proponent to carry out some or all of the Project, unless the Principal expressly agrees otherwise; and
 - (c) the Principal notifies the Proponent that the Principal has ceased considering the Proponent's EOI or all of the Proponent's EOIs if more than one EOI was submitted, or publishes any notice to the public to that effect.

23 Application of Conditions of EOI

- 23.1 Except to the extent the Principal expressly agrees otherwise, these Conditions of EOI shall continue to apply to any process which the Principal may undertake (including following the close of EOIs under the initial EOI Process) in connection with the EOI and shortlisting of Proponents for Stage 2, (including any process involving a second EOI of the Supply, or further negotiations with any of the Proponents).

24 Application

- 24.1 Clause 25 and Clause 26 applies to the extent set out in the relevant legislation. For clarity, this will be the case if:
 - (a) the Supply involves the engagement of a Builder or a Project Manager; and

- (b) the Building Work is being Indirectly Funded by the Australian Government; and
- (c) the Threshold Amounts are satisfied; and
- (d) the price or value and approved expenses for the Building Work is \$4 million (GST inclusive) or more.

25 Building and Construction Industry WHS Accreditation Scheme

- 25.1 The Australian Government is committed to improving work health and safety outcomes in the building and construction industry. An important initiative to achieve this is the Scheme. The Scheme is established by the *Building and Construction Industry (Improving Productivity) Act 2016* and specified in the *Fair Work (Building Industry - Accreditation Scheme) Regulation 2016* (Cth).
- 25.2 The Scheme accreditation requirement applies to all Building Work that is being Indirectly Funded by the Australian Government.
- 25.3 Only persons who are accredited under the Scheme are able to contract for Building Work being Indirectly Funded by the Australian Government.
- 25.4 If the Supply is for the engagement of a Builder, the successful Proponent must:
 - (a) be accredited under the Scheme when entering into the Contract;
 - (b) maintain accreditation while the Building Work is being carried out; and
 - (c) comply with all conditions of Scheme accreditation and the National Construction Code performance requirements in relation to building materials.
- 25.5 If the Supply is for the engagement of a Project Manager, the successful Proponent must ensure that:
 - (a) all contracts for Building Work are only entered into with Builders who are accredited under the Scheme;
 - (b) the Builders contracted to undertake the Building Work maintain accreditation while carrying out the Building Work; and
 - (c) the Builders comply with all conditions of Scheme accreditation and the National Construction Code performance requirements in relation to building materials.
- 25.6 For the purposes of this Clause 25, the terms:
 - (a) **Australian Government** means the Commonwealth (Australian Government) or a Commonwealth authority;
 - (b) **Builder** has the meaning given in section 43(8) of the *Building and Construction Industry (Improving Productivity) Act 2016*. Section 26(1)(f) of the *Fair Work (Building Industry - Accreditation Scheme) Regulation 2016* (Cth) outlines provisions applying to joint venture arrangements that include accredited and unaccredited Builders;
 - (c) **Building Work** has the meaning given in section 6 of the *Building and Construction Industry (Improving Productivity) Act 2016*;
 - (d) **Indirectly Funded** means funding provided by the Australian Government through grants and other programs, including:
 - (i) building projects where the Australian Government provides money through a funding agreement or grants, for example, to the Principal who then may contract with persons who will undertake the Building Work or persons who will arrange for the Building Work to be carried out; or
 - (ii) building projects that the Principal, who receives Australian Government funding, facilitates by agreement;
 - (e) **Project Manager** means a person who administers some or all of the responsibilities of the Principal in the delivery of a project, including arranging for Building Work to be carried out utilising Australian Government funding, including a developer or consortium;
 - (f) **Scheme** means the Australian Government Building and Construction Industry Work Health and Safety Accreditation Scheme described in section 43 of *Building and Construction Industry (Improving Productivity) Act 2016* (Cth); and
 - (g) **Threshold Amounts** means:
 - (i) the value of the Australian Government contribution to the project is at least \$6 million and represents at least 50 per cent of the total construction project value; or
 - (ii) the Australian Government contribution to a project is \$10 million or more, irrespective of the proportion of Australian Government funding.
 Where the above terms are amended or replaced pursuant to any legislation, then those terms above will be amended or replaced and this Clause 25 will be amended and read accordingly.

26 Queensland Code

- 26.1 In addition to terms defined in these Conditions of EOI, terms used in this Clause 26 have the same meaning as is attributed to them in the Queensland Code of Practice for the Building and Construction Industry (**Queensland Code**)
- 26.2 The Queensland Code (and any implementation guidelines which may be introduced) may apply to the project the subject of the Request for EOI. By submitting an EOI, the Proponent acknowledges and agrees that:

- (a) it is aware that the Queensland Code applies to the Request for EOI and is an essential condition to being shortlisted for Stage 2;
- (b) it is deemed to have read and understood the Queensland Code and the obligations it imposes;
- (c) it will comply with the Queensland Code on this project if selected as the successful Proponent;
- (d) it will agree, if selected as the successful Proponent, to contractual terms to give effect to the Queensland Code and mechanisms to ensure its compliance and enforcement;
- (e) any party which is precluded from performing any part of the Supply to which the Queensland Code applies may be excluded from consideration in the EOI Process; and
- (f) it will comply with the Queensland Code in respect of any of its building and construction work on and from the date it is selected as the successful Proponent.

26.3 The Proponent agrees that, if its EOI is shortlisted for Stage 2, the Principal may take steps to investigate claims and assertions made by the Proponent in any documents submitted before any Contract is awarded. The Proponent acknowledges and agrees that co-operation with the Principal is an essential component of the EOI Process and any subsequent procurement process (including Stage 2). Co-operation by the Proponent following the EOI Process (including during Stage 2) will include allowing the Principal and those authorised by the Principal to:

- (a) access premises and sites controlled by the Proponent or its related entities;
 - (b) monitor and investigate compliance with the Queensland Code, including inspecting and copying relevant records and documents;
 - (c) inspect any work, material, machinery, appliance article or facility; and
 - (d) interview any person,
- as is necessary to investigate the Proponent's claims or to demonstrate the Proponent's current or, where relevant, past compliance with the Queensland Code during the EOI Process and any subsequent procurement process (including Stage 2).

26.4 Notwithstanding any other provision of these Conditions of EOI, if the Proponent is selected as the successful Proponent, it agrees and consents to the disclosure of information concerning the Proponent's compliance with the Queensland Code, including the disclosure of details of past and present conduct relating to the Queensland Code and the National Construction Code, as varied from time to time, including whether or not sanctions have been imposed on the Proponent or any of its related entities by the Commonwealth or any State or Government agency. This consent is given to the State of Queensland, including its agencies, Ministers (and its authorised personnel) and the Principal for purposes including monitoring and investigating compliance and ensuring, facilitating and promoting compliance with the Queensland Code.

26.5 Where the Proponent is selected as the successful Proponent, proposes to subcontract a part of the Supply, and is authorised to do so, it agrees that it will ensure, through contract, that each subcontractor or consultant agrees to:

- (a) the items in Clauses 26.2 and 26.4 in respect of the relevant subcontractor or consultant; and
- (b) where a nominated subcontractor or consultant is proposed in an EOI, that nominated party co-operates with Queensland Government authorised personnel during the EOI Process and any subsequent procurement process (including Stage 2) for the purposes outlined in Clause 26.4.

27 Definitions

27.1 In these Conditions of EOI, except where the context otherwise requires:

Business Day means a day that is not:

- (a) a public holiday in the Fraser Coast Regional Council Local Government Area; or
- (b) Saturday, Sunday or 27, 28, 29, 30 or 31 December.

Claims any entitlement, claim, action, proceeding, suit, cause of action, defence, set-off or demand under, arising out of, or in any way in connection with the EOI Documents, EOI Process, or either party's conduct under or before the commencement of the EOI Process, whether at law (including breach of contract) or in equity (including restitution and quantum meruit), by statute, in tort (including negligence) or otherwise, including any claim or entitlement to:

- (a) any adjustment to any price or other consideration payable or the Supply in relation to the EOI Process;
- (b) any costs, expenses, damages, liabilities or other amounts of whatever nature against the Principal or any of the Principal's Personnel; or
- (c) any relief from any of the Proponent's obligations or liabilities under the Request for EOI or the Contract.

Clause means a clause within these Conditions of EOI.

Closing Time means the time and date specified in the Invitation for EOI.

Conditions of EOI means these Conditions of EOI.

Confidential Information means all information:

- (a) of, or supplied or made available by, the Principal; or
- (b) created by the Proponent, from the material supplied or made available to the Proponent by the Principal for the purposes of submitting the EOI, that:
 - (c) is by its nature confidential;
 - (d) is specified as confidential, including the information specified in the Request for EOI; or
- (e) the Proponent or a potential Proponent (including any entity that obtains the information in the Request for EOI but does not submit an EOI) knows or ought to know is confidential, and includes information:
 - (i) comprised in or relating to any Intellectual Property Rights of the Principal;
 - (ii) concerning the internal management and structure, Personnel, processes and policies, commercial operations, financial arrangement or affairs of the Principal;
 - (iii) that contains any technical information, ideas, concepts, know-how, data, drawings, specifications or designs;
 - (iv) that is of actual or potential commercial value to the Principal; and
 - (v) relating to the clients or suppliers of the Principal.

Contact Person means the Principal's representative responsible for enquiries, questions, and clarifications. The Contact Person is only contactable through the Electronic Tender Box's Online Forum.

Contract means the agreement between the Principal and a successful Proponent for the Supply.

EOI means an expression of interest submitted by the Proponent in accordance with these Conditions of EOI and may include an alternative proposal.

EOI Documents has the meaning given in Clause 1.1 of these Conditions of EOI.

EOI Process means the process of the Principal inviting EOIs, preparation and submission of EOIs by the Proponent, communication between the Principal and Proponents in relation to the process and EOIs, the evaluation and consideration of the EOIs and the subsequent shortlisting or rejecting of EOIs.

EOI Response Forms means the documents outlined in the Invitation for EOI as required to lodge an EOI.

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.

GST has the meaning given in the Contract.

Improper Assistance means a wrongful act that unfairly gives an advantage to the Proponent due to assistance, information or property provided by another party.

Intellectual Property Rights means any patent, design (whether registered or not), trademark or name, copyright or other protected right.

Other Contract Documents means those documents which describe the Supply or the Principal's requirements for the Supply which are intended to form part of the Contract as identified in the Invitation for EOI.

Personal Information has the meaning given in the *Information Privacy Act 2009* (Qld).

Personnel means the officers, employees, contractors and agents of the relevant party, but the Personnel of the Principal includes its Councillors and does not include the Proponent and the Personnel of the Proponent does not include the Principal.

Principal has the meaning given in the Contract.

Principal-Supplied Information means:

- (a) the documents and information set out or referenced in the EOI Documents; and
- (b) any other information communicated (by any means) by or on behalf of the Principal to the Proponent, whether before, during or after the EOI Process, including relating to the EOI Documents, the Supply, the Site or the Contract, except the documents and information that are intended to constitute the Contract.

Procurement Email means procurement@frasercoast.qld.gov.au or such email address as it notified to the Proponent by the Principal.

Project Manager means a person who administers some or all of the responsibilities of the Principal in the delivery of a project, including arranging for Building Work to be carried out utilising Australian Government funding, including a developer or consortium.

Proponent means any person lodging an EOI.

Relevant Person means the Proponent and each person engaged in the preparation of an EOI on behalf of the Proponent.

Request for EOI has the meaning given in Clause 1 of these Conditions of EOI.

Site means the area or areas identified as the site in the Invitation for EOI (if any).

Site Inspection means an inspection at a specified place, date and time as detailed in the Invitation for EOI.

Invitation for EOIs means the Expression of Interest Invitation for EOI as part of the Request for EOI, including any amendment or addition to the Invitation for EOI.

Stage 2 has the meaning given in Clause 1.3 of these Conditions of EOI.

Supply means anything which the successful Proponent (if any) is or may be required to do under the Contract as described in the EOI Documents, including the provision of goods, equipment, services or works (as applicable) that are being

procured pursuant to the Invitation for EOI or any consideration (including monetary consideration) (as applicable).