



Conditions of Offer

For the Provision of an Offer to Supply Goods

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CONDITIONS OF OFFER

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Conditions of Offer, unless the context otherwise requires, the following definitions will apply:

“Additional Provisions” means the departures from the Specifications and/or Conditions of Contract proposed by the Offeror in its Offer;

“Business Day” means between 9.00am and 4.00pm on a weekday other than a Saturday, Sunday or public holiday at QIMR's address;

“Closing Date” means the time and date specified in item 2 of Part 1 of the Invitation, by which Offers must be submitted by the Offeror and received by QIMR;

“Conditions of Contract” means the terms and conditions, any additional terms and conditions as specified in Conditions of Contract Version 001 – dated 4 March 2011 and any additional Conditions of Contract as specified in Part 5 of the Invitation;

“Conditions of Offer” means these terms and conditions, any additional terms and conditions as specified in Parts 1 and 2 of the Invitation, which regulate the pre-contractual relationship between the Parties.

Confidential Information means, in relation to QIMR, information that is not trivial and:

- a) is by its nature confidential;
- b) is communicated by QIMR to the Supplier as confidential;
- c) the Supplier knows or ought to know is confidential; and/or
- d) all information obtained by the Supplier in the course of submitting an Offer.

“Contact Officer” means the person nominated by QIMR as specified in item 3 of Part 1 of the Invitation, to be the sole point of contact for this Invitation Process, or other person nominated from time to time by QIMR as the Contact Officer;

“Contract” means a legally binding contract as agreed between QIMR and the Successful Supplier for the provision of the Goods;

QIMR “Delivery Date” means the date on or by which the Goods will be supplied as specified in the Response form 6.4 – Item 7 of Schedule A of the Invitation, by the Successful Supplier to QIMR;

“Delivery Period” means the period in which the Goods will be supplied and/or performed as specified in Response form 6.4 – item 7 of Schedule A of the Invitation, by the Successful Supplier to QIMR;

“Document” includes:

- a) any paper or other material on which there is writing;
- b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and/or
- c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device, and includes electronic documents;

“Evaluation Process and Criteria” means Part 4 of the Invitation which specifies the process and criteria by which QIMR will evaluate Offers;

“Goods” means the material, plant, item or equipment specified in the Specifications (if applicable);

“GST” means a goods and services tax imposed by or through the GST Legislation;

“GST Amount” means the amount of GST payable in respect of any taxable supply under the Contract, calculated at the rate of GST applicable at the time;

“GST Legislation” means *A New Tax System (Goods and Services Tax) Act 1999*;

“Intellectual Property Rights” includes all copyright, trade mark, design, patents or other proprietary rights, or any rights to registration of such rights existing in Australia, or elsewhere or as protected by legislation from time to time;

“Invitation to Offer” or “Invitation” means the documentation issued by QIMR, as specified in clause 1.2.4, inviting Offers for the provision of the Goods;

“Invitation to Offer Details” means the details contained within Part 1 of the Invitation;

“Invitation Process” means the process of inviting Offers for the provision of the Goods, the Offeror’s preparation and submission of an Offer, communication between the Parties in relation to the Invitation and/or Offer, evaluation of Offers and the subsequent acceptance or rejection of Offers;

“Letter of Acceptance” means a letter from QIMR to the Successful Supplier accepting the Offeror’s Offer;

“Offer” means an offer submitted by an Offeror in response to the Invitation, including subsequent modifications;

“Offeror” means the entity specified in the Response Form 6.1 which submits an Offer and in the case of a joint Offer includes each Offeror;

“Order” means the document used to authorise and record the purchase of the Goods by QIMR to the Successful Supplier, which if issued forms part of the Contract;

“Parties” means QIMR and the Offeror;

“Price” means the itemised price or schedule of rates, as specified in the Response Form 6.2, in Australian dollars and unless otherwise specified in the Response Form 6.2 is inclusive of packaging, handling, freight GST and all other duties, taxes and charges;

“QIMR” means The Council of the Queensland Institute of Medical Research;

“Response Form” means the forms contained within the Invitation which the Offeror must complete and submit as part of its Offer, which sets out certain required information and identifies the Offeror’s departure’s from the Invitation;

“Services” means the services as specified in the Specifications (If applicable);

“Specification” means the detailed description of QIMR’s requirements which are contained within the Invitation, specifying the nature of the Goods for which Offers are sought;

“Successful Supplier” means the entity to be specified in Response Form 6.4 – item 2 of Schedule A of the Invitation, from whom the Goods may be procured.

1.2 Interpretation

1.2.1 In these Conditions of Offer, the index and clause headings have been inserted for ease of reference only and are not intended to affect the meaning or interpretation of these Conditions of Offer.

1.2.2 The following rules shall apply in interpreting these Conditions of Offer, except where the context makes it clear that a rule is not intended to apply:

- a) words importing a gender include the other gender;
- b) words in the singular include the plural and vice versa;
- c) all dollar amounts refer to Australian Currency;
- d) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- e) a reference to an entity or person includes an individual, corporation, partnership or other legal entity;
- f) a party includes its executors, administrators, liquidators, successors and permitted assigns;
- g) “consent” means prior written consent;
- h) “in writing” means either by letter, email or facsimile;
- i) a reference to a clause, Response Form, Schedule, attachment or annexure is a reference to a clause, Response Form, Schedule, attachment or annexure to these Conditions of Offer;
- j) if a day on which an act is to be done is a Saturday, Sunday or public holiday in the place where the act is to be done, the act may be done on the next Business Day in that place, unless the Parties agree otherwise;
- k) if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;
- l) a clause is a reference to all of its sub-clauses; and
- m) a document or agreement or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated.

- 1.2.3 If the Offeror comprises two or more persons then their Offer will bind them jointly and each of them severally.
- 1.2.4 The Invitation comprises the following documents:
 - a) invitation to Offer Details;
 - b) conditions of Offer;
 - c) specification;
 - d) evaluation Process and Criteria;
 - e) conditions of Contract; and
 - f) response Forms.

2. COMPLIANCE WITH THE INVITATION

- 2.1 Each Offeror must ensure that its Offer complies with the terms and conditions contained within this Invitation.
- 2.2 Each Offeror must respond to every requirement/question in the Response Forms and submit these as part of its Offer.
- 2.3 The Offeror must specify in the Response Form 6.3 any proposed Additional Provisions which will form part of its Offer.
- 2.4 Any proposed Additional Provisions which are not specified in the Response Form 6.3 will not form part of the Offer and will not be considered by QIMR.
- 2.5 Despite clause 2.3 and 2.4, any proposed Additional Provisions which take away or reduce the entitlements that would otherwise be provided to QIMR will not be considered by QIMR.

3. OFFER VALIDITY PERIOD

- 3.1 Offers must remain valid and open:
 - a) for the minimum period as specified in item 5 of Part 1 of the Invitation after the Closing Date, unless otherwise agreed in writing between QIMR and the Offeror; or
 - b) until QIMR advises the Offeror in writing that it has been successful, whichever occurs first.

4. FORMAT OF OFFER

- 4.1 Each Offeror must ensure that:
 - a) it completes the Response Form;
 - b) its Offer bears the name of the Offeror on each page; and
 - c) its Offer is executed in a manner so as to bind the Offeror (or, in the case of joint offers, each Offeror).
- 4.2 Where the Offeror is required to submit its Offer in a "hard copy" format, the Offeror must ensure that:
 - a) the original Offer is signed and marked 'Original';
 - b) all copies of the Offer are each marked "Copy Only";
 - c) all copies submitted are true copies of the original Offer in all respects. In the event that there is any discrepancy between an original and a copy Offer, the "Original" will be deemed to be the operative document; and
 - d) any alteration in the Offer is initialled by the Offer.

5. ESSENTIAL INFORMATION

5.1 Every Offeror must include in its Offer the following information in Response Form 6.1:

- a) in the case of an Offer by:
 - i. an individual – the Offeror's full name (including given names and surname) and address;
 - ii. an individual or individual's as trustee/s – the full name of the individual/s (including given names and surname) and the address of each trustee of the trust;
 - iii. any registered Business Name (BN) (if applicable);
- b) in the case of an Offer by a company:
 - i. the full name of the company;
 - ii. the address of the registered office of the company;
 - iii. the Australian Company Number (ACN);
 - iv. any registered Business Name (BN) (if applicable);
 - v. the name and company title of the person signing the Offer on behalf of the company; and
 - vi. whether or not the company is a trustee;
- c) in the case of an Offer by a public sector agency:
 - i. the full name and address of the agency; and
 - ii. the name and title of the person signing the Offer on behalf of the agency;
- d) where an Offer trades under a business name:
 - i. the full business name;
 - ii. the address of every proprietor trading under the business name; and
 - iii. the address of the business's place of business;
- e) in the case of joint Offers (including partnerships), the information detailed in paragraphs a) to e) for each Offeror;
- f) if the Offeror proposes to sub-contract the provision of any part of the Goods – the information detailed in paragraphs a) to e) for each sub-contractor together with full details of the sub-contractor's relevant experience and expertise; and
- g) subject to clause 5.2, the active Australian Business Number (ABN) of the Offeror/s (if applicable).

5.2 It is not a requirement under these Conditions of Offer that Offerors possess an Australian Business Number (ABN) at the time of submitting an offer. However, Offerors that do not quote an ABN when submitting an Offer will be required to:

- a) provide evidence of their ABN before any Contract can be entered into with QIMR.

6. LANGUAGE

6.1 Each Offer must be written in the English language.

7. OFFERORS RESPONSIBILITIES

7.1 It is the responsibility of each Offeror to:

- a) read and familiarise itself with the contents of the Invitation;
- b) satisfy itself as to local conditions and facilities that may impact on the Offerors ability to Offer or to supply the Goods;
- c) carry out its own investigation as to the feasibility of its Offer and to rely on that investigation; and
- d) pay its own costs of investigating, preparing and lodging an Offer.

7.2 Any party expending money, making commitments or incurring liabilities on the basis of responding to this Invitation or in relation to any matter contained in the Invitation, does so at its own risk and expense.

7.3 If an Offeror requires information or clarification of any part of the Invitation and/or Invitation Process:

- a) the Offeror must direct its enquiries to the Contact Officer nominated in item 3 of Part 1 of the Invitation;
- b) the Offeror may only rely on the advice, information or clarification provided in writing by QIMR;
- c) if, after seeking clarification from the Contact Officer, the Offeror still has any doubt as to the meaning of any part of the Invitation, the Offeror must include in its Offer a statement identifying the uncertainty and stipulate the interpretation upon which the Offer is based; and
- d) QIMR will not respond to any request for information or clarification from the date specified in item 11 of Part 1 of the Invitation. If no date is specified in item 11 of Part 1 of the Invitation, then this date will default to the Closing Date.

7.4 An Offeror may not claim from QIMR any losses, damages or expenses or an extension of time to make an Offer on the grounds that insufficient or ambiguous information was given in the Invitation, or upon any other grounds.

7.5 QIMR reserves the right to change the Specifications or any part of the Invitation prior to the Closing Date. If the Invitation has been obtained via the Queensland Government Marketplace e-tender website, it is the responsibility of each Offeror to regularly check this website for any changes to the Invitation prior to the Closing Date. QIMR accepts no responsibility for Offerors not being aware of any changes to the Invitation.

8. LODGEMENT OF OFFER

8.1 If specified in item 6 of Part 1 of the Invitation that an Offer must be submitted in a "hard copy" format, every Offer must be:

- a) sealed in an appropriate package;
- b) submitted in the format and number of copies specified
- c) endorsed on the front of the sealed package; and
- d) directed to QIMR at the specified address.

8.2 If specified in item 7 of Part 1 of the Invitation that an Offer must be submitted electronically via the Queensland Government Marketplace e-Tender website, the Offer:

- a) must ensure that the Offer is lodged using the identification details and unique password for the Invitation, received when downloading the original Invitation document;
- b) must ensure that the Offer is submitted in the format specified in item 7 of Part 1 of the Invitation;
- c) may submit multiple attachments to the Offer/s to this website;
- d) must keep the file size of each document below 10MB (10,000KB); and

- e) must ensure prior to submitting an Offer that it is free from viruses and has been checked with an up-to-date virus checking program.
- 8.3 When the Offer document/s is processed a system generated receipt confirmation shall be emailed to the Offeror.
- 8.4 An Offeror may submit one or more Offers in response to this Invitation. Part Offers, being Offers that only address part of the Invitation, may not be considered at the entire discretion of QIMR.
- 8.5 The Offeror must ensure that its Offer is received by QIMR by the Closing Date as specified in item 2 of Part 1 of the Invitation.
- 8.6 Lodgement of an Offer in the manner specified in the Invitation will constitute an Offer by the Offeror to supply the Goods on the terms of the Invitation subject to any proposed Additional Provisions specified in Response Form 6.3.
- 8.7 Unless otherwise specified in item 8 of Part 1 of the Invitation, Offers sent or transmitted to QIMR by email and/or facsimile will **not** be considered.
- 8.8 Unless otherwise specified in item 9 of Part 1 of the Invitation, QIMR will retain all documents and any samples (if applicable) submitted in response to the Invitation.

9. NON – CONFORMING OFFERS

- 9.1 Failure to comply with all or any of the requirements of the Invitation may result in an Offer being considered non-conforming. QIMR may for any reason decline to consider any non-conforming Offers.

10. ALTERNATIVE BRANDS

- 10.1 Where any specific brand or model of Goods is stated by QIMR in the Specifications, the Offeror may submit other brands or models which, in the opinion of the Offeror are at least equivalent to the brand or model of Goods specified. Pursuant to clause 24 QIMR reserves the right to accept an Offer which QIMR considers the best solution for its requirements.
- 10.2 QIMR is not obliged to provide reasons for non-acceptance of any non-conforming Offer.

11. ALTERNATIVE GOODS

- 11.1 Offerors may submit an:
 - a) alternative offer; and/or
 - b) alternative technical and innovation solution.
- 11.2 The Offeror must include details of the benefits to QIMR of the alternative Offer and/or solution.
- 11.3 Pursuant to clause 24 QIMR reserves the right to accept an Offer which QIMR considers the best solution for its requirements.

12. CONFIDENTIAL INFORMATION

- 12.1 The Offeror or any potential Offeror (Including an entity which obtains the information in the Invitation but does not submit an Offer), must ensure that it and its officers, employees, agents and sub-contractors who are in possession of Confidential Information, keep that information confidential.

- 12.2 If requested by QIMR, the Offeror or potential Offeror must complete a confidentiality undertaking, in a form acceptable to or provided by QIMR, from itself and/or from each of its officers, employees, agents and sub-contractors who receive the information.
- 12.3 Clauses 12.1 to 12.2 do not apply to Confidential Information:
- a) which was already known by the Supplier without any prior obligation of confidentiality to QIMR
 - b) which has become public knowledge (other than through a breach of an obligation of confidence);
 - c) to the extent the Offeror is required by law to disclose it.

13. PREVIOUS DISCUSSIONS/UNDERTAKINGS

- 13.1 On the release of the Invitation, any previous undertakings, representations, promises or conditions in respect of the subject matter of the Invitation shall not be binding on QIMR.

14. COMPLIANCE WITH LAWS AND OTHER REQUIREMENTS

- 14.1 All Goods offered by the Offeror, unless otherwise specified, shall comply with all applicable:
- a) legislative requirements; and
 - b) any Government code, policy or guideline and Australian/New Zealand Standard, and where an Australian/New Zealand Standard does not exist, the relevant and current International Standard (ISO) shall apply.

15. PRICES OFFERED

- 15.1 Prices specified in the Offer must:
- a) be in Australian currency;
 - b) indicate GST exclusive and GST inclusive pricing and if applicable, any other government taxes or duty (e.g. import duty, etc);
 - c) include the cost of suitable packaging, delivery and installation, unless otherwise specified in the Invitation; and
 - d) if subject to fluctuation, include particulars of the price fluctuation formula and all variables, including the timing of the fluctuation.
- 15.2 The Offeror must ensure that the Offer clearly states any trade, settlement and/or early payment discounts from the Prices Offered.
- 15.3 QIMR reserves the right not to accept an Offer which requires payment in advance for the Goods.

16. COMPETITIVE NEUTRALITY

- 16.1 Offers submitted by a government owned business, a local government, and or a Commonwealth, State or Territory agency or authority, must be priced to comply with the competitive neutrality principles of the Offeror's respective jurisdiction.

17. DELIVERY DATE OR DELIVERY PERIOD

- 17.1 The Offeror must state in the Response Form 6.4 – Item 3 of Schedule A, the Delivery Date or Delivery Period as applicable, for the Goods.

18. OPENING OF OFFERS

- 18.1 Offers will not be opened publicly, unless otherwise specified in item 10 of Part 1 of the Invitation.

19. INVITATION TO OFFER PROCESS

- 19.1 The conduct of the Invitation Process does not give rise to any legal or equitable relationship.
- 19.2 QIMR may cancel or vary the Invitation Process at any time, whether before, on or after the Closing Date for Offers.
- 19.3 No Offeror shall be entitled to claim compensation or loss from QIMR for any matter arising out of the Invitation Process, including but not limited to any failure by QIMR to comply with the Conditions of Offer.

20. EVALUATION

- 20.1 The offer evaluation process will involve an assessment of conforming Offers, and any non-conforming Offers QIMR may choose to consider, against the Evaluation Process and Criteria.
- 20.2 QIMR may consider innovative solutions to meet the Specification requirements.
- 20.3 QIMR reserves the right to short list Offerors during the evaluation process using the evaluation criteria as specified in the Evaluation Process and Criteria.
- 20.4 Irrespective of whether it is stipulated in the Evaluation Process and Criteria, the evaluation process may also involve, but is not limited to, discussions with Offerors, reference checks, financial checks, credit checks, company searches, site visits and presentations from some or all Offerors.
- 20.5 If specified in the Specifications, an Offeror must submit for trial or inspection, within a specified time period nominated by QIMR, a sample or the same make and model of Goods specified in its Offer.

21. POST-OFFER NEGOTIATIONS OR OTHER FORM OF COMMUNICATION

- 21.1 QIMR reserves the right to enter into post Offer negotiations with one or more Offerors.
- 21.2 QIMR may interview an Offeror in relation to its Offer. The Offeror should be represented at the interview by personnel who are authorised to make decisions on behalf of the Offeror and who are conversant with all technical, financial and contractual details of the Offer, as applicable.
- 21.3 QIMR may seek further information from the Offeror in writing (e.g. letter, email or facsimile). Any information provided by or on behalf of the Offeror verbally must promptly be confirmed in writing if so required by QIMR.
- 21.4 Any amendment to the Offer occurring as a result of post-offer negotiations or as a result of a request for further information or clarification between the Parties, which is documented in writing, will form part of the Offer.

22. COMMISSIONS, INCENTIVES, COLLUSION AND CONFLICTS OF INTEREST

- 22.1 An Offeror and/or its representatives must not give or offer to QIMR or any officer or employee of QIMR, or to a parent, spouse, child or associate of an officer or employee, any inducement, gift or reward, which could in any way tend to influence QIMR's actions in relation to an Offer.

- 22.2 If QIMR discovers at any time that an Offeror has breached clause 22.1, QIMR may not consider that Offer.
- 22.3 The Offeror warrants that the Offer is in all respect an independent Offer and that no collusion has taken place between the Offeror and any other Offeror, potential Offeror or interested party in the preparation of the whole or any part of the Offer.

23. ACCEPTANCE AND/OR REJECTION

23.1 QIMR reserves the right to:

- a) accept one Offer, or more than one Offer, for the whole of its requirements;
- b) accept separate Offers for any portion of its requirements;
- c) accept one Offer, or more than one Offer, for any portion of its requirements;
- d) accept an Offer that QIMR considers the best solution;
- e) not accept the lowest Offer; or
- f) not accept any Offer.

24. SUCCESSFUL SUPPLIER

24.1 If QIMR elects to accept an Offer QIMR will issue a Letter of Acceptance and/or other form of document (e.g. Order) to the Successful Supplier and upon its acknowledgement by the Successful Supplier a Contract will come into existence.

25. ADVICE TO UNSUCCESSFUL SUPPLIERS

25.1 Unsuccessful Suppliers will be notified in writing that they have been unsuccessful.

26. DECISION AND DEBRIEFING

- 26.1 All Offerors, whether successful or unsuccessful may seek feedback from the Contact Officer at the completion of the Invitation Process.
- 26.2 A feedback or debriefing session shall be an opportunity to provide a successful or unsuccessful Offeror with information that may assist the Offeror to improve any future offers submitted to QIMR. The feedback or debriefing session is not an opportunity to discuss the outcome of the evaluation of Offers to this Invitation nor the relative merits of any other Offer submitted.
- 26.3 QIMR will not enter into any correspondence, oral or written, about its selection decision(s).

27. NO ADVERTISEMENT

27.1 The Offeror will not make any public announcement or advertisement in any medium in relation to the Invitation Process without prior written approval to QIMR.

28. GOVERNING LAW

- 28.1 Subject to clause 20.1, any Offer submitted in response to the Invitation shall be governed by and construed in accordance with the laws of Queensland and the Parties submit to the non-exclusive jurisdiction of the courts of Queensland.

29. RIGHT TO INFORMATION AND DISCLOSURE

- 29.1 The *Right to Information Act 2009* (RTI Act) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies.
- 29.2 The *RTI Act* requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to the public interest.
- 29.3 Information contained in an Offer is potentially subject to disclosure to third parties.
- 29.4 If disclosure under the RTI Act, and/or general disclosure of its Offer or part thereof, would be of substantial concern to an Offeror, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, this should be indicated in Response Form 6.1. The QIMR cannot guarantee that any information provided by the Offeror, including information that is identified by the Offeror in Response Form 6.1, will be protected from disclosure under the RTI Act.
- 29.5 Despite any other provision of the Invitation and/or Invitation Process, the QIMR is entitled to publish on the Queensland Government Chief Procurement Office website (www.qgcpcpo.qld.gov.au under 'eTender system for Government Suppliers') or by any other means, the following details:
- a) the name and address of the QIMR and/or Customer;
 - b) a description of the Goods;
 - c) contract commencement date or date awarded;
 - d) contract value;
 - e) name and address of the Successful Offeror; and
 - f) procurement method used.
- 29.6 Any proposed variation by the Offeror to clause 29.5 which take away or reduce the entitlements that would otherwise be provided to QIMR under that clause will be null and void.